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A DIGEST

OF THE

CRIMINAL LAW

OF THE

PRESIDENCY OF FORT WILLIAM

AND

GUIDE

TO ALL

CRIMINAL AUTHORITIES THEREIN.

SECOND EDITION.

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BOOK III.

OF THE MISCELLANEOUS DUTIES OF THE MAGISTRATE.

CHAPTER I.

OF FERRIES AND TOLLS.

SECTION I.

OF FERRIES, AND FERRY FUNDS.

3050. The immediate superintendence of the public ferries is vested in the magistrates; and the collectors of revenue are to refrain from exercising any interference with them. Reg. VI. 1819, sect. 2, cl. 2.

Immediate superintendence vested in magistrates,

3051. The acts of the magistrate in the *management* of ferries are subject to the control of the superintendent of police; and all appeals from orders in such matters are to be received and disposed of exclusively by that authority. C. O. No. 29 of vol. 3. Const. No. 1144.

subject to the control of the superintendent of police.

3052. No ferries are to be considered public ferries, except such as are situated at or near the sudder stations of the several magistrates, or such as intersect the chief military routes, or other much frequented roads, or such as from special considerations it appears advisable to place under the more immediate management of the magistrate. Reg. VI. 1819, sect. 3, cl. 1.

What ferries are to be considered public ferries.

3053. The government reserves to itself the power of determining from time to time what ferries are, under the preceding rule, to be deemed public ferries, and as such are to be subject to the immediate control of the magistrates; and no magistrate is, without previous authority from government, to assume the management of any ferry which has not been previously subjected to assessment. Reg. VI. 1819, sect. 3, cl. 2.

The magistrate is not to assume charge of any ferry, as coming within the above rule, without the sanction of government,

3054. Magistrates are to report, through the superintendents of police, for the information and orders of government, when in their judgment ferries should, under the foregoing rules, be considered to be public ferries. Reg. VI. 1819, sect. 3, cl. 3.

but is to report to government.

3055. The power of appointing proper persons to the charge of the public ferries is vested in the magistrates, who are authorized, from time to time, to issue such orders as they judge expedient for limiting the rates of toll to be levied at each ferry, for regulating the number and description of boats to be maintained, for preventing exactions, and generally for promoting the efficiency of the police, and the safety and convenience of the community. Reg. VI. 1819, sect. 4, cl. 1.

Magistrate to appoint proper persons to the charge of the public ferries; and to regulate the tolls, boats, &c.

Magistrate to remove such persons on proof of misconduct.

3056. On proof of any wilful breach of these rules, or of other misconduct on the part of the manjees or other persons in charge of the public ferries, the magistrates are empowered (independently of any punishment to which the parties subject themselves under the general regulations) to remove such individuals, and to appoint others in their room. Reg. VI. 1819, sect. 4, cl. 2.

What persons are exempted from the payment of tolls at public ferries;

3057. The manjees, or other persons who are vested with the charge of public ferries, are to engage to cross free of toll the troops of government with their baggage and military stores, as well as all police and other native officers of government, who are actually employed in the public service. Reg. VI. 1819, sect. 4, cl. 3.

and at all ferries.

3058. All officers of government are exempted from the payment of ferry tolls within the division to which they belong, when they are moving in those divisions on the public service; and any officer not entitled to exemption under this definition of the rule, who prefers a claim to exemption based on the principle which the rule is intended to establish, is to refer his claim, for special consideration and orders, to the department to which he belongs. C. O. No. 208 of vol. 3. *L. P.* C. O. Sup. Pol. *L. P.* No. 9 of 1845.

Lists of ferries to be constantly exhibited.

3059. A list of all public ferries, bearing the signature of the magistrate, is to be constantly stuck up in some conspicuous place in his cutcherry, and in that of the collector of the district, and likewise in the thana within the jurisdiction of which they are situated. Reg. VI. 1819, sect. 5.

Private boats not to ply for hire in the vicinity of public ferries; but attention to be paid to claims for compensation.

3060. Such ferries exclusively belong to government; and no person is to be allowed to employ a ferry boat plying for hire at or in their immediate vicinity, without the previous sanction of the magistrate:—provided however, that due attention is to be paid to all claims for compensation which are preferred by individuals for any loss sustained by them, in consequence of the extention of the authority of government to ferries hitherto under their private management, and which have not been heretofore let in farm, or held khas, or otherwise deemed subject to assessment on account of government. Reg. VI. 1819, sect. 6, cl. 1.

Plying private boats in the vicinity of public ferries is a misdemeanor.

3061. A contravention of the above rule, by parties contrary to order plying their boats in the vicinity of a government ferry, is a misdemeanor punishable by the magistrate under the general powers vested in him by the provisions of sect. 19, Reg. IX. 1807. Const. No. 1305.

Claims for compensation to be reported to government.

3062. Claims of the above nature are to be inquired into by the magistrate, and his opinion on the merits of each case is to be reported, through the channel of the superintendent of police, for the consideration and orders of government. Reg. VI. 1819, sect. 6, cl. 2.

General objects to which the magistrate is to attend in assuming charge of public ferries.

3063. In assuming the management of public ferries, the general objects of the magistrates are to be, the maintenance of an efficient police, the safety and convenience of travellers, the facility of commercial intercourse, and the expeditious transport of troops. For the above objects they are to be careful to provide or cause to be provided safe and commodious boats; they are to fix the rates of toll on a very moderate scale, in no case

exceeding, without an indispensable necessity, the rates which prevailed previous to the enactment of Reg. XIX. 1816(*a*); they are to adjust the modes of payment so that the tolls may bear as lightly as possible on the poorer classes of the community; and by leaving a fair profit to the individual, who is chosen for the immediate charge of the ferries, they are to endeavour to secure as far as possible the services of respectable and competent persons. Reg. VI. 1819, sect. 7, cl. 1.

The above objects to be first attained; and surplus collections how to be disposed of afterwards.

3064. No collections are to be taken on account of government from the proceeds of any ferry, until the above objects are fully secured; and if in any case there remains a clear surplus profit, after providing adequately for those purposes, the amount collected is to be applied solely to the furtherance of similar objects, such as the repair or construction of roads, bridges, and drains, the erection of sarais, or other works of a like nature. Reg. VI. 1819, sect. 7, cl. 2.

Rule of proceeding when ferries yield a surplus revenue.

3065. In cases of the latter description, viz. those in which the receipts of any ferry are sufficient to afford a surplus revenue as above mentioned, the magistrate, having previously received special authority from government in that behalf, may and is to require the persons holding or applying for the charge of the ferry, to enter into engagements for the payment, by monthly or quarterly instalments, of such a sum of money as with reference to the estimated surplus appears justly demandable without risking the primary objects above indicated; and if any person in charge of the ferry refuses to enter into an engagement as aforesaid, and does not assign sufficient cause for such refusal to the satisfaction of the magistrate, it is competent to such officer to transfer the charge of the ferry to any other respectable and competent person:—provided however that no person in charge of a ferry, who otherwise conducts himself to the magistrate's satisfaction, is to be removed from his charge under the above rule excepting at the expiration of the Bengal or Fussily year, according to the era current in the province. Reg. VI. 1819, sect. 7, cl. 3.

Mode in which collections are to be paid, to be regulated by government.

3066. The mode in which collections made under this section are to be paid, whether into the treasury of the magistrate or collector, or any other public officer, is to be determined by the orders of government, and adjusted with the party by the magistrate at the time of giving him charge of the ferry or ferries entrusted to him:—provided, however, that as a general rule all persons in charge of ferries subject to the payment of a rent are, on discharging any instalments, to receive and to be directed to require receipts for the amount, which are to be countersigned by a European officer of government. Reg. VI. 1819, sect. 7, cl. 4.

Farmers of public ferries cannot underlet them.

* *i. e. by a summary suit before the collector.*

3067. A person holding the farm of a public ferry is not authorized to underlet it without the sanction of the magistrate(*b*). A summary suit by such farmer against his katkinadar would not be cognizable by the collector under Reg. VIII. 1831*, the mode of proceeding being expressly provided, in such cases, by the above rules. Const. No. 713.

(*a*) The regulation by which the management of ferries was first entrusted to officers of government.

(*b*) It was observed by the Western court, that "the regulation cited (Reg. VI. 1819) does not appear to contemplate the underletting of public ferries either with or without the magistrate's sanction."

Security from persons in charge of public ferries.

3068. The magistrate is competent to take security for the good behaviour of persons vested with the charge of public ferries; and in the case of persons who, under the provisions of the foregoing section, enter into an engagement for the payment of a yearly rent, it is likewise competent to him to require adequate security for the punctual payment of the amount, as it becomes due. Reg. VI. 1819, sect. 8.

Pottahs and kaboolyuts need not be on stampt paper.

3069. Leases and counterparts granted to and taken from the farmers of ferries need not be written on stampt paper, as they come within the exemption in schedule A, Reg. X. 1829, of conveyances in which government is a party. Const. No. 1111.

Persons in charge of public ferries may always relinquish them on giving ten days' notice

3070. Any person in charge of a public ferry, whether subject to the payment of rent or not, is at liberty to relinquish the charge on giving 10 days' notice to the magistrate, and on paying any arrears that are due:—provided, however, that it is in such case competent to the magistrate to require any person who so relinquishes the charge of a ferry, or who is removed from such charge, to transfer the boats belonging to the ferry to the persons, who are appointed to succeed him, at a fair valuation, or to retain the boats until others can be provided, making a suitable compensation to the owner. Reg. VI. 1819, sect. 9.

Arrears how to be recovered from defaulters.

3071. If any person having charge of a ferry, subjected to the payment of a yearly rent, fails to discharge the amount as it becomes due, he is liable to immediate removal; and the magistrate, after ascertaining the arrear and certifying the default, is to proceed to the recovery of the amount from the party, and his surety, in the manner prescribed by sect. 7. Reg. XVIII. 1817* for the recovery of public money embezzled by native officers, giving at the same time a liberal consideration to any pleas, which the party urges in explanation of the default. Reg. VI. 1819, sect 10.

* c. *paras.* 2549 *et seq.*

In such cases the appeal does not lie to the session judge.

3072. It is not competent to a session judge to receive an appeal from the orders of a magistrate for the realization of ferry balances. C. O. No. 39 of vol. 3.

Magistrate is always to reserve to himself the power of reducing tolls, or extending exemptions.

3073. All persons vested with the charge of public ferries, whether paying any rent or not, are, on accepting the situation, to be distinctly apprized, that the magistrate reserves to himself the power of reducing the rates of toll, or extending the exemptions from the payment of it, at such times and in such manner as appears proper with a view to the public good:—provided, however, that in the event of any such measures being adopted, the party in charge of the ferry may relinquish the charge; and the magistrate is in such case to purchase from him at a fair valuation, or to cause his successor so to purchase, all boats belonging to the ferry with all articles thereunto appertaining. Reg. VI. 1819, sect. 11.

In such case magistrate to state whether he intends to reduce the rent.

3074. Provided also that whenever a magistrate adopts such measures in regard to any ferry for which a rent has been required from the person vested with the charge of it, he is, in communicating his orders to the party aforesaid, at the same time to apprize him, whether he designs to allow any, and what, reduction in the stipulated rent. Reg. VI. 1819, sect. 12, cl. 1.

Rule in such cases, if the person in charge is

3075. If the person in charge of the ferry is not willing or able to pay the rent so fixed by the magistrate, he is nevertheless immediately to carry the magistrate's order into

effect, and is to state in his reply to those orders the amount of rent which he is willing to continue to discharge. Should the offer of the party in charge of the ferry appear inadequate, it is competent to the magistrate to remove him and to place another person in charge of the ferry, purchasing the boats and their appurtenances as aforesaid; but the person so removed is to be required to pay for the days during which he retains charge, subsequently to the date of his reply to the magistrate's order, a proportionate rent calculated at such rate only as he has tendered. Reg. VI. 1819, sect. 12, cl. 2.

desirous to relinquish it.

3076. The foregoing rules are intended to apply exclusively to those ferries, which are declared to be public ferries; with regard to all other ferries, the magistrates are not to interfere with them, further than is necessary for the general maintenance of the police, and for the safety of passengers and property. Reg. VI. 1819, sect. 13, cl. 1.

Ferries not made public under the above rules.

3077. Provided however that if any person is drowned or exposed to imminent danger, or if any property is lost or damaged, by the oversetting or sinking of a ferry boat, and it is established, on inquiry before the magistrate, that the boat was overloaded with passengers or property, or was insufficiently manned, or was out of repair at the time of the accident,—the manjee of the ghat or boat, if duly convicted of permitting his boat to be overloaded, or to be insufficiently manned, or out of repair, is liable to such punishment, as the magistrate thinks proper to impose not exceeding imprisonment for 6 months, or a fine of 200 rupees. Reg. VI. 1819, sect. 13, cl. 2.

Penalty for accidents to life or property in consequence of the neglect of the manjees.

3078. An annual statement made up to the 1st of January of each year is to be forwarded by the several magistrates to the superintendents of police, exhibiting the number of public ferries in each district, the amount of the net assessment realized from such of them as are subject to assessment, and the purposes to which the amount so realized has been appropriated under cl. 2, sect. 7 of this Regulation. In submitting to government the results of those statements, the superintendents of police are to offer any suggestions which appear to them calculated to facilitate or to improve the practical operation of the system. Reg. VI. 1819, sect. 14.

Annual statement of ferries, and surplus proceeds.

Ferry Fund Committees L. P.

3079. The following rules have been enacted by the government of Bengal for the appropriation of the surplus ferry collection: *Rule* 1. Committees shall be formed in each district for the management of the surplus ferry funds collected under Reg. VI. 1819, and applicable under cl. 2, sect. 7 of that enactment for the promotion of the convenience and safety of travellers, and the facility of commercial intercourse. *Rule* 2. Each district committee shall consist of not more than nine persons. The magistrate of the district and the executive officer of the division are to be ex-officio members of the committee. The remainder shall in the first instance be appointed by government upon the recommendation of the commissioner, and shall consist as well of persons out of the service, natives and Europeans, as of those who are connected with it. Future vacancies to be filled up by the commissioner, subject to the approbation of government. *Rule* 3. The commissioner shall be a member of the local committees, and preside at the meetings whenever he is present. He shall also have a casting vote, whether absent or present, when opinions are divided. *Rule* 4. The magistrate will from time to time convene meetings of the committee for the

Objects of appointment.

Formation of committee, and nomination of members.

Superintendent of police to preside, and to have the casting vote.

Meetings how to be convened.

Authority required for the transaction of business.

transaction of business, giving due notice to the members. *Rule* 5. No meeting of the committee shall be held in the absence of the magistrate; but the magistrate and one other member, or the magistrate singly, may transact the business of the committee, if other members after due notice fail to attend. *Rule* 6. The magistrate may at his discretion undertake any business, which may be of such a nature as not to bear the delay of a reference to a meeting of the committee; he will on all such occasions report his proceedings at the next meeting. [*Rule* 7 divided the country into unions, but for these the divisions of the commissioners were substituted by order of government *Bengal*, No. 912, April 22, 1854.] *Rule* 9. At the close of each official year, the accountant will ascertain what is the amount of surplus ferry funds in each union during the preceding year, and distribute the total equally amongst the several districts comprised in it; the government reserving to itself the power of making a different allotment of the funds, should such alteration hereafter appear expedient. *Rule* 10. Each committee will keep a book in which will be entered minutes of all its proceedings and resolutions. The proceedings of each meeting shall be attested by the members present. *Rule* 11. Each committee will apply the funds assigned to it to the completion of new, and the repair of old public works, in such manner as it may think fit, reporting at the close of each year the manner in which its funds have been applied, and stating the works to which its attention will be directed in the year ensuing. *Rule* 13. Provided that no part of the funds shall be expended on station roads or station improvements without the sanction of government. *Rule* 14. Each committee is authorized to entertain executive establishments for carrying on public works. *Rule* 15. These rules relate exclusively to surplus funds accruing after the 30th April 1840. No surplus, which may have accrued in any district before that date, can be expended without the express sanction of government. C. O. Sup. Pol. *L. P.* No. 2 of 1848.

Unions.

Annual apportionment of surplus funds.

Book of minutes.

Funds to be applied at the discretion of the committee.

Funds not to be expended on the station.

Executive establishments.

Retrospective limit of these rules.

Memo. of funds in hand to be forwarded with applications for sanction to outlays.

3080. A memorandum of the funds at the credit of the committee is invariably to accompany applications to the commissioner for sanction to outlays on works, &c. contemplated by the committee. C. O. Sup. Pol. *L. P.* No. 8 of 1848.

Instructions for the expenditure of the annual assignment of funds in 1856-57.

3081. It is assumed that a sum of 5,000 rupees cannot, in ordinary cases, be safely and efficiently expended under a surveillance costing less than 1,200 rupees a year. It is expected that this scale will enable each committee to engage a competent professionally-trained person and establishment for their works. Each committee will therefore now understand that the sum set down is placed absolutely at its disposal for the entertainment of an establishment. This sum is not to be all frittered away on mere office clerks, nor on the salary of a secretary, unless the secretary is personally able to prepare plans and drawings and estimates of works, and to undertake the personal superintendence of the works. As a general rule the magistrate of the district should be ex-officio secretary, and of course will receive no salary. If any committee thinks that a less sum is required, or if by combining with any adjacent committees they can thereby diminish the expenditure for establishment and superintendence, they are authorized to lay out the difference on public works: but if they consider a larger sum necessary on this head, they must apply for the sanction of government. The sum now awarded to each committee is hereby placed at its absolute disposal, subject only to the control of the commissioner. Each committee

is at once authorized to undertake, without further reference to government all those plans and undertakings which meet with the approval of the commissioner. It is only in case of a difference of opinion between the commissioner and the committee that a reference to government for sanction will be needful. If the sum allotted is not sufficient to complete the work which any committee considers itself able to get through in the working season of 1856-57, the government will be prepared to consider the expediency of granting a further sum on application made; but no further grant will be made merely according to the estimates of works, the completion of which will not be effected within the present season. As the entire responsibility for the due expenditure of these funds is now made over to the commissioner and the committee, the Lieutenant Governor trusts that they will endeavour to make the best use of the resources at their disposal, so as to justify the confidence which has been reposed in them. The committee will not fail to take advantage of the power thus placed in their hands to encourage local subscriptions in aid of the works which they will now be able to undertake without uncertainty or delay. As a general rule the committees should be prepared to double the amount of any subscription tendered to them by any private individuals for useful public works. Each committee is required to submit, on the 30th April 1857, a tabular statement in the form No. 32 of appendix C, showing the manner in which its funds have been expended. Resolution Govt. *Bengal*, No. 1308, September 12, 1856.

Commissioner has power to transfer the unexpended funds.

3082. The annual allotment of funds to each district is to be based on the average amount of the collection in each revenue division. If the alloted funds of any one district are not spent, or appropriated, for the accomplishment of specific and approved objects within a year from the date of allotment, the commissioner may take the whole or any part of the unexpended or unappropriated balance at the credit of any particular district, and place it at the disposal of the ferry fund committee of any other district of the division, where it appears to be more wanted, or likely to be more beneficially applied; reporting the circumstance in each instance for the information of government. Order Govt. *Bengal*, No. 912, April 22, 1854.

Nomination of members of committee.

3083. On submitting nominations, through the commissioner of circuit, for the appointment of gentlemen, as members of the committee, who are not in the public service, the committee are to report what position those gentlemen hold in the district, and why and by whom the nomination has been suggested. The government should be aided by a distinct expression of opinion by the commissioner. C. O. Govt. *Bengal*, No. 1014, April 26, 1854; No. 24, June 21, 1855.

Apportionment of balance remaining at the close of the year.

3084. The unexpended balances of each district at the close of the year are to be carried separately to the credit of each committee, instead of the whole balances of the districts forming one union being added to the funds of the year available for that union, and then divided amongst the districts comprising it. C. O. Sup. Pol. *L. P.* No. 17 of 1844.

Suggestions for management of ferries.

3085. The following "suggestions for the better management of the ferries by the help of the district committees" were circulated with the approbation of government.

Statement to be

(I.) The magistrate is to place before the committee a statement of the number of the

laid before the committee.

public ferries with the rents derived from each; and the members of the committee are to be requested to furnish him with information regarding other ferries, which under the provisions of Reg. VI. 1819 ought to be declared public. (II.) The members are to be requested to superintend the several ferries near to their residences, affording to the magistrate their aid in checking extortion on the part of the holders of the ferry, as well as in keeping up good boats and efficient crews, reporting to the magistrate either individually or through the committee any abuses which exist. (III.) The magistrate, before concluding arrangements for the ferries, is to place before the committee the offers made to him, the numbers of boats, and the strength of the crews to be kept up, and the rates of toll at each ferry, together with all other circumstances for their approval; after obtaining which he is to conclude the engagements and forward them to the office of the superintendent of police,—the members of the committee having of course the power to submit any objections through their secretary or the magistrate to the same authority. (IV.) The magistrate and the committee are particularly requested to take into consideration the advantages to be gained by leasing the ferries for longer periods than from year to year. If a reasonable rent is procured, such a measure will encourage the farmer or manager to lay out capital in procuring good boats, and give him a greater interest in his farm; and will have a tendency to prevent the extortion now practised for the sake of obtaining as much profit as possible within the year. The leases might be given for three years at the least. (V.) All estimates of expenses for boats, ghats, &c. are to be submitted to and approved by the committee, and sent through them to the superintendent of police for sanction. C. O. Sup. Pol. *L. P.* No. 11 of 1842.

Individual members to superintend the ferries near to their residences.

Arrangements for ferries to be submitted to committee for approval.

Duration of leases of ferries.

Estimates of expenses to be submitted through the committee.

Expenses chargeable to the ferry fund.

3086. The expense of providing boats, rope-bridges, and other means of crossing the public mail over rivers and nullahs, is fairly chargeable to the ferry fund. The committees are therefore to take into consideration the lines of post road within their districts, and to adopt measures for the speedy and secure transit of the public mail over such obstacles as occur in the road. C. O. Sup. Pol. *L. P.* No. 18 of 1842.

Primary object of committees to make the ferries secure, and to provide accommodation thereat for travellers.

3087. Before any part of the proceeds of the ferries is applied to other purposes, the ferries themselves should be made in all respects secure; boats suited to the local circumstances of the rivers, on which they are employed, should be provided and maintained in a state of efficiency; and convenient places built for travellers and merchants, who are often unavoidably delayed at them. For these purposes there should certainly be efficient protection afforded by proper police establishments on the spot paid out of the proceeds of the ferries; and, if possible, there should be made some safe and convenient place of resort of the nature of a sarai, especially at the large and more important ferries. The superintendent of police objects to the employment of single police officers at out-posts. Order Govt. *Bengal*, May 2, 1837. C. O. Sup. Pol. *L. P.* No. 18 of 1844.

Annual report of works under the supervision of committees.

3088. A report is to be furnished annually to the superintendent of police by the committee of the works in progress under their supervision, in the form No. 16 of appendix F. C. O. Sup. Pol. *L. P.* No. 2 of 1844, and No. 2 of 1846.

3089. The ferry fund committees cannot expect, in addition to the annual surplus funds, that the convicts should be placed at their disposal, which would be equal to a further large money assignment. C. O. Sup. Pol. *L. P.* No. 766, April 2, 1844.

The committees are not entitled to convict labor free of expense.

3090. The following rules are in force in the *Western* provinces. *Rule* 1. Committees are formed in each district for the management of the surplus ferry funds collected under Reg. VI. 1819, and applicable under cl. 2, sect. 7 of that enactment to the promotion of the conveniences and safety of travellers, and the facility of commercial intercourse. *Rule* 2. These committees are to consist of the magistrate and collector, the joint magistrate and deputy collector, the executive engineer, the civil surgeon, and any other number of persons whom they may associate with themselves, subject to the confirmation of the commissioner of the division, whose approval is necessary. When once so appointed, they are removable only by government. Three members constitute a quorum for the transaction of business. *Rule* 3. The commissioner of the division is a member of the local committee, and is to preside at the meetings whenever he is present. He has also a casting vote, whether absent or present, when opinions are divided. *Rule* 4. The country is divided into unions. The surplus ferry funds in these are thrown together, and are divided between the several districts which compose them. *Rule* 5. At the close of each official year the accountant is to ascertain what is the amount of surplus ferry funds in each union during the preceding year, and is to distribute the total equally among the several districts comprised in it; but the government reserves to itself the power of making a different allotment of the funds, if such alteration should appear expedient. *Rule* 6. Each committee is to keep a book, in which are to be entered minutes of all its proceedings and resolutions. The proceedings of such meetings are to be attested by the members who are present. Appointments of members of the committee must be entered on the proceedings. This book is always to be open to the inspection of any persons, who desire to peruse it. *Rule* 7. Any member of a committee has the power to demand a reference to the government, through the commissioner, on any point on which he may differ from the majority. *Rule* 8. The commissioner, on the recommendation of the committee, is competent to sanction establishments to the amount of 150 rupees per mensem, and estimates to the extent of 1000 rupees on any one work. Larger undertakings must be submitted to government. *Rule* 9. The disbursements are to be exhibited in the magistrate's accounts, and passed under the rules applicable to such cases. The magistrates are to pay on an order signed by three members of the committee and the authority of the commissioner. *Rule* 10. The same committee constituted as above are to administer the one-per-cent road fund, but without the restrictions on the disbursements contained in rule 8. *Rule* 11. Certain roads are exempted from the control of the committee. C. O. Govt. *W. P.* February 10, 1841; and No. 1053A, September 21, 1854.

Ferry Fund Committees W. P.

Objects of committee.

Formation of committee and nomination of members.

Three constitute quorum.

Commissioner to preside and to have casting vote.

Unions.

Annual apportionment of funds.

Book of proceedings.

Member may refer to government.

Sanction to proposed expenditure.

Disbursements to be noted in magistrate's accounts.

One-per-cent road fund.

3091. Commissioners are to observe the following rules in the management of the public ferries. *Rule* 1. In all ferries which are now held kham they will have effect from the 1st of January 1851, and in all the ferries which are farmed, they will form the conditions on which the next farm will be granted. *Rule* 2. The rivers on which public ferries are established are divided into three classes as follows:—First class; the Ganges at and below Daranuggur Ghat, and the Gogra.—Second class; the Ganges above Daranuggur Ghat and the Jumna at

Rules for management of ferries.

Divided into three classes.

and below Delhi; the Goomtee; the Raptee below Goruckpore; the Gunduk; the Tonsé (between Mirzapore and Allahabad); and the Ramgunga below Bareilly.—Third class; all other streams than the above, being generally such as are fordable during half the year. *Rule* 3. Tolls shall be levied on all rivers thus classed from parties crossing in boats or over floating bridges. No tolls shall be demanded from persons fording the river. *Rule* 4. The tolls shall be levied at the rates specified in the annexed schedule A(*a*). The rates leviable according to this schedule at any particular ferry shall be written legibly in English, Oordoo, and Hindee, in the currency mentioned in the schedule, and also in the equivalent local currency wherever the calculation by pies may not be intelligible to the people; and shall be exposed to public view in some conspicuous place wherever tolls are demanded. The toll-keeper shall also have in his possession a copy of the schedule of rates clearly written on paper in English, Oordoo, and Hindee, which he will produce on demand by every passenger who is not on foot. *Rule* 5. Infraction of the terms of the lease will expose the contractor to annulment of the the lease, and to the imposition of a fine, leviable by suit in the civil court, not exceeding the

Tolls not to be levied from persons fording.

Rates and schedule of tolls.

Infraction of terms of lease.

(*a*) (A.)

Schedule of Tolls to be demanded on each Public Ferry in the North Western Provinces,

Names.	On Rivers, Class 1st.		On Rivers, Class 2d.		On Rivers, Class 3rd.	Remarks.
	Boats from 15th October to 15th June.	Bridges during 12 months, or Boats from 16th June to 14th October.	Boats from 15th October to 15th June.	Bridges during 12 months, or Boats from 16th June to 14th October.		
Foot passenger laden, or unladen, ...	2 pie	3 pie	1 pie	2 pie	1 pie	
Camels unladen, ...	1 anna	1 anna	9 pie	1 anna	6 pie	
Ditto laden, ...	1½ anna	2 annas	1 anna	1½ anna	9 pie	
Cows, bullocks, buffaloes, unladen, ...	2 pie	3 pie	1½ pie	2 pie	1½ pie	
Ditto, ditto, ditto, laden, ...	4 pie	6 pie	3 pie	4 pie	3 pie	
Ditto, in droves of 50 and upwards per 100, unladen,	12 annas	1 rupee	10 annas	12 annas	8 annas	
Ditto, ditto, ditto, ditto, laden per 100, ...	1½ rupee	2 rupees	1¼ rupee	1½ rupee	1 rupee	
Donkeys, laden or unladen, ...	1 pie	2 pie	1 pie	1 pie	½ pie	
Tattoos or mules, with riders, or laden, ...	4 pie	6 pie	3 pie	4 pie	3 pie	
Ditto, led, or unladen, ...	2 pie	3 pie	1½ pie	2 pie	1½ pie	
Horse, with rider, or laden, ...	1 anna	1½ anna	6 pie	1 anna	6 pie	
Ditto, led, or unladen, ...	6 pie	9 pie	4 pie	6 pie	3 pie	
Byli with riders, drivers, and bullocks, ...	4 annas	6 annas	3 annas	4 annas	2 annas	
Ruth, with ditto, ditto, ditto, ...	8 annas	12 annas	6 annas	8 annas	4 annas	
Ekka, ...	3 annas	4 annas	2 annas	3 annas	1½ anna	
Buggies and one horse carriages, ...	6 annas	8 annas	4 annas	6 annas	4 annas	
Two horse carriages, ...	12 annas	1 rupee	8 annas	12 annas	8 annas	
Four horse carriages, ...	1½ rupee	2 rupees	1 rupee	1½ rupee	1 rupee	
Carts with bullocks and driver empty, per bullock,	6 pie	9 pie	4½ pie	6 pie	3 pie	
Ditto laden, per bullock, ...	1 anna	1½ anna	9 pie	1 anna	6 pie	
Elephant, ...	1 rupee	1½ rupee	12 annas	1 rupee	8 annas	
Palanquin, dooly, or miana, with 2 bearers, ...	6 pie	9 pie	3 pie	6 pie	3 pie	
Ditto, with 4 bearers, ...	1½ anna	2 annas	1 anna	1½ anna	1 anna	
Ditto, with 6 bearers, ...	3 annas	4 annas	2 annas	3 annas	2 annas	
Ditto, with 8 or more bearers, ...	6 annas	8 annas	4 annas	6 annas	4 annas	
Sheep, swine, and goats, ...	½ pie	½ pie	½ pie	½ pie	½ pie	

N. B. The above rates include the passage of all persons *bonâ fide* accompanying the animals or conveyances therein mentioned.

twelfth part of the annual rent. The farmer or his servants will also be liable to punishment under the general regulations for any offence which they may commit against the laws in their management of the ferry. *Rule* 6. Farms shall not be given more than one year, nor to the same person for two contiguous ferries, without the sanction of government. Whenever a magistrate may desire to lease more than one ferry to one person or to grant leases for a longer period than one year he must make a special report on the subject to the government through the commissioner. *Rule* 7. The kists payable by the farmer in each month should be calculated as far as possible according to the ratio of the probable receipts in that month. *Rule* 8. The annexed form of lease B (*b*) and counterpart C (*c*) for the farm of a ferry

Farms to be given for one year; and no two ferries to one person.

Kists.

Form of lease.

(*b*) (B.)

Form of Lease of a Public Ferry.

1. A. B. inhabitant of C. son of D. is authorized to collect tolls according to the annexed schedule, from all persons crossing the E. ghât by the ferry boats, or (floating bridge) over the river F. from January 1st, 185—, to December 31st, 18—, both inclusive. 2. For this purpose he is empowered to station toll gatherers at not more than one place on either bank, who are hereby authorized to prevent any person, with the exceptions below noted, from crossing by the boat (or bridge) till the toll be paid. They are not authorized to prevent persons from fording the river. 3. Tolls shall be levied according to the annexed schedule, and no toll gatherer shall demand more than the authorized amount. 4. Every toll gatherer is bound to suspend in some conspicuous place, a schedule of tolls legibly written in English, Oordoo, and Hindee, according to the annexed schedule. He shall also be bound to keep and produce on the demand of every passenger not on foot a similar schedule written on paper. 5. The aforesaid farmer A. B. is bound to pay into the magistrate's court the following sums by instalments on each date, as mentioned below:—

January 31st, 18—, ...	000	Co.'s Rs.
February 28th, ——, ...	000	,,
March 31st, 18—, ...	000	,,
&c. &c. &c.		
Total,	000	Co.'s Rs.

6. The following persons shall be held exempted from demand on account of public tolls. *First*. Military men and camp followers, according to existing orders. *Second*. Civil officers of the government when travelling on the public service. *Third*. Foreign rulers and their followers or retainers, or other natives of distinction, when especially exempted by order of the government, or the commissioner, or the magistrate. *Fourth*. Cultivators, woodcutters, grasscutters &c., who daily cross, as may be determined between the magistrate and contractor. (This last exemption will vary or be omitted according to local usage.) 7. The aforesaid farmer A. B. is bound to maintain not less than 00 efficient boats always at the ghat, of 00 maunds burthen, measuring 00 feet in length, and 00 in breadth, of which not less than 0 shall have platforms measuring 12 feet each way. The magistrate shall determine whether the boats provided are sufficiently safe and trustworthy. If the magistrate declare any boat to be unsafe or unsuited to the purpose, the aforesaid farmer A. B. shall be bound to provide another within the space of one week. (This clause will of course be different in the case of a floating bridge.) 8. The farm shall not be underlet or transferred to another person without the consent of the magistrate. 9. The infraction of any of the above stipulations will enable the magistrate immediately to cancel the lease, in which case the farmer will be liable to a fine at the discretion of the magistrate, not exceeding the twelfth part of his annual rent, the same to be enforced, if not paid, by suit in the civil court. The farmer or his servants will also be liable to punishment under the regulations in force, according to the circumstances of each case. (Signed) M. N.

Magistrate.

(*c*) (C.)

Form of Subscription to a Copy of the above Lease by way of counterpart engagement.

1. A. B. inhabitant of C. son of D. have perused and understood all the stipulations contained in the above lease. To the terms therein prescribed, I give my consent, and hold myself bound by them. In evidence thereof I hereby affix my signature. I also find security for the payment of the instalments fixed in the lease, according to the annexed bond.

(Signed,) A. B.

Farmer.

Witnesses attesting the signature

R._____

S._____

Bridges to be opened for passage of boats.

shall be generally used, but other stipulations not inconsistent with those that are prescribed may be introduced according to local circumstances. The farmers of bridges should be bound to open the bridge free of charge at stated hours twice in each day for the passage of boats. Govt. Order *W. P.* No. 3469, November 5, 1850; and No. 4307, November 6, 1847.

Rules for disbursement of funds.

3092. The government of the *Western* Provinces has laid down the following directions for the guidance of the road committees in the disbursement of the funds committed to their charge. *Rule* 1. The first object should be to keep all the district roads in a fair state

Chief object to keep roads in repair;

of repair during the season when traffic is most commonly conducted along them. This is the primary object for which the funds are appropriated, and till it is effected there cannot be any surplus for extraordinary purposes. *Rule* 2. When the existing district roads have

second, to improve chief lines.

been put into ordinary repair, any surplus which may remain should be devoted to the further improvement of the chief lines of commercial communication. *Rule* 3. The earliest

Lines to be marked out.

opportunity should be seized for surveying and marking out these lines, and no expensive works should be undertaken upon them till the superintending engineer has approved the line, which it is proposed to select. When the reference is made to the superintending engineer a copy of the reference should be sent through the commissioner to government, in order to ensure early attention to the subject. *Rule* 4. When the line has been selected

Estimate.

and approved for the formation of a metalled and finished road, an estimate should be formed of the expense involved, and a note made of those parts which most need repair and

Worst parts to be repaired first.

improved means of transit. *Rule* 5. The first available surplus should be devoted to the improvement of those parts of the road, which offer the greatest obstacles to the passage of vehicles, such as marshes, sandhills, deep nullahs, or rivers; when these obstructions have been removed, then it will be time to pay attention to the less difficult parts of the route,

If the best mode cannot be accomplished, expedients to be adopted.

and to place the whole in a completely finished state. *Rule* 6. Whenever the more perfect and costly modes of overcoming obstructions upon a road cannot be accomplished, palliatives should be introduced so far as means will allow. If a bridge cannot be built, a good ferry boat may be provided, or the descents to the nullah kept in good repair, and perhaps a paved ford be added. It must always be remembered that one great obstruction, left unremedied, renders useless a whole line of most perfectly finished road, and that these obstructions are the points which require the greatest and most prompt attention. *Rule* 7.

Bridges most important.

Generally speaking, the provision for bridges and drains upon a line of road is of more importance than raising and metalling. *Rule* 8. No bridge or masonry work of any size,

Masonry works to be approved by engineer before commencement.

costing for instance more than 100 rupees, should be commenced without the approval of the executive officer, or superintending engineer. *Rule* 9. The committee will make every practicable exertion to keep themselves informed of the state of the roads in the district, both

Committee to keep themselves informed of the state of the roads.

by personal observation and the reports of casual travellers. The latter may be secured by keeping a book at the sudder station which should be presented to all travellers, proceeding otherwise than by dâk, in order that they may have an opportunity of recording any observations they may have made on the roads over which they passed. Govt. Order *W. P.* June 5, 1844.

3093. In the *Western* Provinces a special meeting of the road and ferry fund committee should be held in the latter fortnight of every August, at which there should be a general review of all that has been effected during the past season, and a careful record and consideration of all projects for the coming year with reference to the funds at the disposal of the committee. The report of this meeting should be forwarded to the commissioner so as to reach him before the close of the month of August, and should state to which of the projected works its efforts ought to be directed during the approaching season; and should give a general estimate of their expense and of the disbursements which will probably be necessary for the preservation of existing roads and works. The commissioner is to preside at the committee of the station, where he may be at the time resident; and should lose no time in considering the merits and practicability of all the proposed undertakings, and in signifying his assent or otherwise, in the former of which cases the committee is to proceed to the execution of them. The committee in case of urgency may request a reference to government which the commissioner is to transmit with his own remarks. The rule in paragraph 8 of the notification dated 10th February 1841* is equally applicable to disbursements from the one per cent. fund; but the preliminary approval by government is unnecessary in any case of outlay from that fund. Whenever a committee may desire to run a road to the boundary of its own district, it should communicate to the local committee of the neighbouring district the proposed line, and point at which it will touch that district, so that the precise direction may be determined with a view to unite the lines proposed by the several district committees. As soon as possible after the 1st of each January the commissioner should submit an annual report and sketch map, stating what may have been effected and at what expense by each committee in the division during the previous year, and detailing the sanctioned projects for the current year and the estimated expense of each. There should also be a comparative statement of the aggregate proposed outlay, and of the resources at the disposal of both funds. C. O. Govt. *W. P.* No. 229 B, March 3, 1854.

Special annual meeting of committee.

Report to be sent to commissioner.

Committee may refer to government.

* *See para.* 3090

If proposed road would go beyond the district.

Annual report of commissioner.

SECTION II.

OF TOLLS ON ROADS AND BRIDGES.

3094. The governor of the presidency of Fort William in Bengal, and the lieutenant governor of the North Western provinces of Bengal, may cause such rates of toll, not exceeding the rates mentioned in the schedule annexed to this Act(*a*), as they respectively

Local governments to fix the rate of tolls on roads and bridges.

(*a*) *SCHEDULE.*

On every four wheeled carriage on springs, ...	2 rupees.
On every two wheeled carriage on springs (except native hackeries,)	1 rupee.
On every native hackery on springs, ...	2 annas.
On every four wheeled carriage without springs, ...	6 annas.
On every two wheeled carriage without springs, ...	4 annas.
On every cart and hackery not on springs, and having wheels of less diameter than three feet six inches and tires less in breadth than three inches, ...	8 annas.

think fit, to be levied upon any road or bridge which has been, or shall hereafter be, made or repaired at the expense of the government; and may place the collection of such tolls under the management of such persons as may appear to them proper: and all persons employed in the management and collection of such tolls shall be liable to the same responsibilities, as would belong to them, if employed in the collection of the land revenue. Act VIII. 1851, sect. 2.

Levy of toll by seizure and sale.

3095. In case of non-payment of any such toll on demand, the officers appointed to collect the same may seize any of the carriages or animals on which it is chargeable, or any part of their burden of sufficient value to defray the toll; and, if any toll remains undischarged for twenty-four hours, with the cost arising from such seizure, the case shall be brought before the officer appointed to superintend the collection of the said toll, who may sell the property seized for discharge of the toll, and all expenses occasioned by such non-payment, seizure, and sale, and cause any balance that may remain to be returned, on demand, to the owner of the property; and the said officer, on receipt of the property, shall forthwith issue a notice that, at noon of the next day, exclusive of Sunday, or any close holiday, he will sell the property by auction. Provided that if, at any time before the sale has actually begun, the person whose property has been seized shall tender the amount of all the expences incurred, and of double the toll payable by him, the said officer shall forthwith release the property seized. Act VIII. 1851, sect. 3.

Troops, military stores, and police officers, exempt.

3096. No tolls shall be paid for the passage of troops and military stores and equipages on their march, or of police officers on duty, or of any person or property in their custody; but no other exemption from payment of the tolls levied under this Act shall be allowed. Act VIII. 1851, sect. 4.

Police officers to assist toll collectors.

3097. All police officers shall be bound to assist the toll collectors, when required, in the execution of this Act; and, for that purpose, shall have the same power which they have in the exercise of their common police duties. Act VIII. 1851, sect. 5.

Punishment for unlawfully levying toll or excess of toll.

3098. Every person, other than the persons appointed to collect the tolls under this Act, who shall levy or demand any toll on any public road or

On every cart and hackery not on springs and not having wheels of less diameter than three feet six inches, and tires less in breadth than three inches,	2 annas.
Buffaloes or bullocks per head,	6 pie.
On every elephant,	1 rupee.
On every camel,	4 annas.
On every horse,	1 anna.
On every tattoo,	6 pie.
On every score of sheep or goats,	2 annas.
On every herd of swine per hundred,	4 annas.
On every mule,	3 pie.
On every ass,	2 pie.
On every palanquin or tonjon with bearers,	1 rupee.
On every palna or small native palanquin with bearers,	4 annas.
On every native dooly with bearers,	2 annas.
On every person carrying a load for hire,	2 pie.

N. B. Animals drawing any vehicle for which toll can be demanded are not to be also charged with toll.

bridge, or for passing through any bazar situated thereon, and also every person who shall unlawfully and extortionately demand, or take any other, or higher, toll than the lawful toll, or under colour of this Act seize or sell any property, knowing such seizure or sale to be unlawful, or in any manner unlawfully extort money, or any valuable thing from any person under color of this Act shall be liable, on conviction before a magistrate, to imprisonment for any term not exceeding six calendar months, or to fine not exceeding two hundred rupees, any part of which fine may be awarded by the magistrate to the person aggrieved: but this remedy shall not be deemed to bar, or affect, his right to have redress by suit in the civil court of the zillah. Act VIII. 1851, sect. 6.

Table of tolls to be exhibited at toll gate.

3099. A table of the tolls authorized to be taken at any toll-gate or station shall be put up in a conspicuous place near such gate or station legibly written or printed in English words and figures, and also in those of the vernacular language of the district; to which shall be annexed, written or printed in like manner, a statement of the penalties for refusing to pay the tolls and for taking any unlawful toll. Act VIII. 1851, sect. 7.

Appropriation o tolls.

3100. The tolls, levied under this Act, shall be deemed public revenue; but the net proceeds thereof shall be applied wholly to the construction, repair, and maintenance of roads and bridges within the presidency in which they are levied. Act VIII. 1851, sect. 8.

CHAPTER II.

OF LOCAL IMPROVEMENTS.

SECTION I.

OF LOCAL AGENCIES.

Superintendence of lands endowed for certain purposes is vested in the board of revenue.

3101. The general superintendence of all lands granted for the support of mosques, Hindu temples, colleges, and for other pious and beneficial purposes; and of all public buildings, such as bridges, sarais, kutras, and other edifices; is vested in the boards of revenue. Reg. XIX. 1810, sect. 2.

The board is to be careful that the endowments are duly appropriated, and the buildings kept in repair.

3102. It is the duty of those boards to take care that all endowments made for the maintenance of establishments of the above description are duly appropriated to the purpose for which they were destined by the government or individual by whom such endowments were granted. In like manner it is the duty of those boards to provide, with the sanction of government, for the due repair and maintenance of all public

edifices(a), which have been erected at the expense of either the former or present government or of individuals; and which either at present are or can conveniently be rendered conducive to the convenience of the community. Reg. XIX. 1810, sect. 3.

Buildings decayed or useless how to be disposed of.

3103. In those cases however in which any of the buildings in question have fallen to decay, and cannot from that or other causes be conveniently repaired, or are not calculated, if repaired, to afford any material accommodation to the public, the boards are to recommend that they be sold on the public account, or otherwise disposed of, as may appear most expedient. Reg. XIX. 1810, sect. 4.

The board is to be careful that such lands or buildings are not appropriated to private purposes.

3104. Under the foregoing rules it is of course incumbent on those boards to prevent any lands, which have been granted for the support of establishments of the above description, from being converted to the private use of individuals, or appropriated in any other mode contrary to the intent and will of the donor: and likewise to prevent all public edifices from being usurped by individuals, and falling into the possession and exclusive use of private persons. Reg. XIX. 1810. sect. 5.

Estimates of necessary repairs to be submitted to government.

3105. Whenever the boards of revenue are of opinion that any of the above-mentioned edifices [*i. e.* mosques, Hindu temples, colleges, and other buildings appropriated to pious and beneficial purposes] require repair, they are to obtain the necessary estimates of the expense required for the execution of the work, and forward them to government for its approval. Reg. XIX. 1810, sect. 6.

Superintendence of escheats vested in board of revenue.

3106. The general superintendence of all nazul property or escheats is likewise vested in the boards of revenue, who are to inform themselves fully, through the channel hereafter mentioned, of all property of that description, and to report to government whether it should in their opinion be sold on the public account, or in what other mode it should be disposed of. Reg. XIX. 1810, sect. 7.

The above powers are vested in the commissioners of revenue, subject to the authority of the board of revenue.

3107. The commissioners of revenue are to exercise the powers vested in the board of revenue in regard to the general superintendence of nazul property or escheats, subject to the authority of the board, who are to inform themselves of all property of that description by means of the local commissioner, and to report to government, whether it should, in their opinion, be sold on account of government, or otherwise disposed of. The general superintendence of all lands granted for pious or beneficial purposes, and of the public edifices specified above, is in like manner vested in the commissioners, to whose immediate orders and control the local agents are to be subject. Rules of practice for commissioners of revenue, Nos. 49 and 50.

Local agent appointed for these purposes under the board of revenue.

3108. To enable the boards of revenue the better to carry into effect the duties entrusted to them by this regulation, local agents are appointed in each zillah, subject to the authority, control, and orders of those boards respectively. Reg. XIX. 1810, sect. 8.

(a) "The general superintendence of all lands assigned as endowments for the maintenance of bridges, sarais, and kutras, shall remain as heretofore vested in the board of revenue and board of commissioners; but such parts of Reg. XIX. 1810, as require that those boards should provide, with the sanction of government, for the due repair of public edifices of this description, are hereby rescinded." Reg. XVII. 1816, sect. 16. They are now placed under the control of the superintendents of police; see paras: 3120 *et seq.*

3109. The collector of the zillah is *ex-officio* one of those agents, with whom the government is to unite such other persons, whether members of the public services, or otherwise, as may from time to time be judged expedient. Reg. XIX. 1810, sect. 9. Act XXXVIII. 1837.

Collector is *ex-officio* one of the agents, and government to appoint others.

3110. By order of government all magistrates are *ex-officio* members of local agencies. C. O. Sup. Pol. *L. P.* No. 9 of 1841.

Magistrate is *ex-officio* a local agent.

3111. In cases in which it becomes necessary, under these provisions, to institute an investigation into the appropriation of the funds assigned for the support of public institutions, the local agents are authorized, if it appears expedient, to convene a committee of natives of respectability, willing to undertake the duty, and of the proper persuasion according to the nature of the institution or endowment to which the inquiry has reference, to conduct the investigation under their superintendence and control. They are further competent to exercise their discretion in employing the agency, or availing themselves of the aid, of respectable natives, whom they find willing to assist in the general administration of the functions committed to them, and to determine the nature and extent of the interference which such persons are to exercise. C. O. S. B. R. *L. P.* No. 52, February 4, 1820.

The local agents may avail themselves of the aid and employ the agency of respectable natives.

3112. Under the above provisions, it is of course the duty of the agents to obtain full information from the public records, and by personal inquiries, respecting all endowments, establishments, and buildings of the nature of those above described, and of all nazul property and escheats; and to report to the commissioner any instances in which they have reason to believe that the lands or buildings are improperly appropriated; being in all cases careful not to infringe any private rights, or to occasion unnecessary trouble or vexation to individuals. Reg. XIX. 1810, sect. 10.

Such agents to obtain information regarding such endowments, &c, and to report on them.

3113. Officers of government are not to interfere with endowments for the maintenance of institutions purely religious without an application from the heads of the community connected with or interested in the institutions. C. O. S. B. R. *L. P.* No. 497, November 6, 1838.

Endowments purely religious not to be interfered with.

3114. The agents were required to ascertain and report the names, together with other particulars, of the (then) present trustees, managers, or superintendents of the several institutions, foundations, or establishments above described; whether under the designation of mutawalli or any other; and by whom and under what authority appointed or elected; and whether in conformity to the special provisions of the original endowment and appropriation by the founder, or under any general rule or maxim applicable to such institutions and foundations. Reg. XIX. 1810, sect. 11.

The agents were required to ascertain the names, &c. of the then trustees, or managers, and by whom appointed.

3115. The local agents are to report all vacancies and casualties which occur, with full information of all circumstances, to enable the commissioner and board to judge of the pretensions of the person or persons claiming the trust; particularly whether the succession has been heretofore by inheritance in the line of descent; or whether the successor has been in former instances elected, and by whom; or whether he has been nominated by the founder, or his heir or representative, or by any other individual patron of the foundation, or by any

The agents are to report all vacancies with full information as to the pretensions of claimants.

officer or representative of government, of directly by the government itself. Reg. XIX. 1810, sect. 12.

The agents are to recommend fit persons when the nomination is vested in or devolves upon government.

3116. In those cases in which the nomination has usually rested with the present or former government, or with a public officer, or of right appertains to government in consequence of no private person being competent and entitled to make sufficient provision for the succession to the trust and management, it is the duty of the local agents to propose, for the approval and confirmation of the superior authorities, a fit person or persons for the charge of trustee or manager and superintendent, duly attending to the qualifications of the person selected, and to any special provisions of the original endowment and foundation, and to the general rules and known usages of the country applicable to such cases. Reg. XIX. 1810, sect. 13.

The board is to appoint such persons, or to make such other provision for the trust as is deemed right.

3117. On the receipt of the report and information required above, the board of revenue is either to appoint the person or persons nominated for their approval; or is to make such other provision for the trust, superintendence, and management, as may be right and fit with reference to the nature and conditions of the endowment; having previously called for any requisite further information from the local agents. Reg. XIX. 1810, sect. 14.

Individuals deeming themselves injured by orders passed under this regulation may sue for the recovery of their rights, or for damages.

3118. Nothing contained in this regulation is to be construed to preclude any individual, who conceives that he has just grounds of complaint on account of any orders which are passed by any of the above-mentioned authorities, with respect to the appropriation of any lands or buildings of the nature of those above described, from suing in the mode and form prescribed by the regulations, where government or public officers are parties; or under the general provisions of the regulations, if the suit is brought against a competitor, or other private person; for the recovery thereof in the regular course of law, or for compensation in damages for any loss or injury supposed to have been unduly sustained by him. Reg. XIX. 1810, sect. 15.

Specification of the objects of this regulation.

3119. It is to be clearly understood that the object of this regulation is solely to provide for the due appropriation of lands granted for public purposes agreeably to the intent of the grantor, and not to resume any part of the produce of them for the benefit of government. In like manner it is fully intended that all buildings erected by the former or present government, or by individuals for the convenience of the public, should be exclusively appropriated to that purpose, with the exception of such as have fallen to decay and cannot from that, or any other cause be, conveniently repaired, or which under existing circumstances can no longer contribute to the accommodation of the community. Reg. XIX. 1810, sect. 16.

SECTION II.

OF PUBLIC WORKS.

General control of superintendent of police over roads &c.

3120. The superintendents of police are to exercise a general control over the public roads, bridges, sarais, and kutras, within the limits of their respective jurisdictions. Reg. XVII. 1816, sect. 17, cl. 1.

Magistrate is to communicate with him regarding such works.

3121. Whenever the local magistrates are of opinion that any works of the description specified in the preceding clause are necessary in the cities or zillahs subject to their authority, they are to communicate their sentiments upon the subject to the superintendent of police, instead of addressing themselves directly to government. Reg. XVII. 1816, sect. 17, cl. 2.

What points the superintendent is to consider, in regard to such works;

3122. On receipt of communications of the description above-mentioned, the superintendents of police are to consider not merely the local advantages which may attend the proposed works, but likewise their tendency to facilitate the communication between the several districts, and their general utility, whether in the promotion of the commercial or common interests of the country at large. Reg. XVII. 1816, sect. 17, cl. 3.

and how far the labor of convicts is available;

3123. The superintendents of police are likewise to ascertain how far the labor of the convicts confined in the several districts, within their respective jurisdictions, can be employed in the execution of the proposed works without withdrawing them from other works of equal or greater utility. Reg. XVII. 1816, sect. 17, cl. 4.

the magistrate supplying the necessary information.

3124. The magistrates are to furnish the superintendents of police with such information as is required by such officers in regard to the employment of the convicts and the state of the public works. Reg. XVII. 1816, sect. 17, cl. 5.

Steps to be taken if convicts are required from other zillahs for such works.

3125. Whenever it is necessary, under the orders of government, to collect any number of convicts together for the execution of public works, and such convicts cannot be supplied from the sudder station of the district in which their services are required, the superintendents of police are to make application to government, stating the number of prisoners required, the work on which it is proposed that they should be employed, and the districts from which in their opinion they can be most conveniently supplied; and the government is to determine on the expediency of the removal of the convicts, and to issue such instructions on the subject to the local magistrates as are deemed proper. Reg. XVII. 1816, sect. 18.

Report to be made if the superintendent considers that such works should be undertaken at the expense of government,

3126. In cases in which the superintendents of police are of opinion, whether on consideration of reports from the local magistrates, or from other sources of information, that any public works, of the description specified above, should be undertaken at the expense of government, they are to ascertain from the local authorities, and as far as practicable from professional persons, the expense to which government would be subject in the execution of the proposed works, and are to submit a full and comprehensive report on the

subject to government, containing the necessary information in regard to the utility of the work, together with an estimate of the probable expense attending its execution. Reg. XVII. 1816, sect. 19, cl. 1.

stating what funds are available for such purposes.

3127. In submitting reports of the above description, the superintendents of police are to be careful to ascertain whether any means can be devised for defraying the expense of the proposed works otherwise than from the general funds of government; and they are to refrain from recommending any expensive undertakings, except in cases which promise to be attended with more than ordinary convenience and advantage. Reg. XVII. 1816, sect. 19, cl. 2.

Expensive works not to be recommended unless specially useful.

System for the preservation and maintenance of fair-weather roads in Bengal.

3128. The government of Bengal, under date the 23rd March 1854, sanctioned the adoption of the following system for the preservation and maintenance in good repair of all fair-weather roads in Bengal. Immediately after the rains, such roads are to be placed in order, and from time to time as required, and after rain, they are to be kept in order; the bill being presented at the end of the season, with a certificate from the government officers who have had the best opportunity of judging of the condition in which the roads have been maintained,—the expenditure being fixed within a certain sum per mile. This sum, which, according to the climate, the dimensions of the road, the nature of the soil, and extent of traffic, will vary from 30 to 50 and even to 100 rupees per mile, should be well ascertained for sanction by government, an advance being made at the end of every rainy season, to enable the officers in charge to place the road in order without delay; any saving on the amount being paid back at the season's end, and a receipt of the collector appended to the bill. This system may with advantage be carried out for all the fair-weather roads in Bengal. C. O. Board of Revenue No. 12, April 7, 1854.

Preservation of ancient structures.

3129. In the Western provinces, magistrates within whose jurisdiction there may exist ancient structures of marked interest and beauty, which, by timely care and at a moderate expense, may yet be protected from decay, are to bring from time to time to the early notice of government any apparent necessity for the adoption of measures with a view to guard them from destruction. There must of course be a limited selection of objects of this nature. Government Order, *W. P.* No. 213A, December 7, 1853.

SECTION III.

OF THE ACQUISITION OF LAND FOR PUBLIC PURPOSES.

Land may be taken by government under the provisions of this Act after declaration made that it is required for a public purpose.

3130. Whenever it appears to the local government that any land is required to be taken by government at the public expense for a public purpose, a declaration shall be made to that effect under the signature of a secretary to the government, or of some officer duly authorized to certify the orders of the government, and such declaration shall be conclusive evidence that the purpose for which the land is needed is a public purpose; and, after making

such declaration, the government may take any such land in the manner hereinafter provided. Act VI. 1857, sect. 2.

After declaration, collector shall be directed to take order for acquisition of land as hereinafter provided.

3131. Whenever any land shall have been declared to be so required for a public purpose, the government shall direct the collector of the district, or some other officer specially appointed in that behalf, to take order for the acquisition of the land in the manner hereinafter provided. Act VI. 1857, sect. 3.

Collector shall cause the land to be marked out and measured, and a plan to be made of the same; and give notice to all persons interested in the land.

3132. The collector or other officer shall thereupon cause the land to be marked out and measured, and a plan to be made of the same. After the land has been so marked out and measured, he shall cause a notice to be affixed in some conspicuous place upon the land, and published by proclamation in the neighbouring bazars and villages, to the effect that the land is about to be taken by government for a public purpose; and shall also give notice to the same effect to the occupier (if any) of such land, and to all such persons known or believed to be interested therein or to be entitled by section 38 of this Act to act for persons so interested as shall reside or have agents within the collectorate or other revenue district in which the land is situate, by serving such notice on such persons or their agents. Such notice shall contain a citation calling on all persons interested in the land to appear personally or by agent at a time and place therein mentioned, such time not being less than fifteen days after the date of publication of the notice, and to state the nature of their interests in the land, and the amount and particulars of their claims to compensation for the same. Act VI. 1857, sect. 4.

Collector to enquire into the value of the land, and the amount of compensation to be awarded.

Collector with consent of parties to make award which shall be conclusive.

3133. On the day fixed, the collector or other officer shall proceed to enquire summarily into the value of the land and the amount of compensation to be awarded: and, if he and all the persons interested who have attended in pursuance of the notice agree as to the amount of compensation to be allowed, shall make an award for the same; and if the said persons agree also in the apportionment of the compensation, such apportionment shall be specified in the award. The award shall be final and conclusive in regard to the value of the land and the amount of compensation for the same; and also in regard to the apportionment (if any) of the compensation among the persons who have agreed thereto. The collector or other officer may, if no claimant shall attend pursuant to the notice, or if he shall think fit for any other cause, postpone the enquiry to a day to be fixed by him and notified in the manner provided in the preceding section. Act VI. 1857, sect. 5.

Postponement of enquiry.

If no claimant attends, or if collector and persons interested are unable to agree as to the amount of compensation, the dispute shall be referred to arbitrators.

3134. When the collector or other officer proceeds to make the enquiry as aforesaid, whether on the day originally fixed for the enquiry or on the day to which the enquiry may have been postponed, if no claimant shall attend, or if the said collector or other officer shall be unable to agree with the persons interested who have attended in pursuance of the notice as to the amount of compensation to be allowed, the matter shall be referred to the determination of arbitrators to be appointed in the manner hereinafter provided. Act VI. 1857, sect. 6.

Who shall be deemed to be interested in the land in cases of conflicting claims.

3135. If upon the said enquiry any question arise respecting the title to the land or any rights or interests therein, between two or more persons making conflicting claims in respect thereof, the person deemed by the collector or other officer to be in possession as owner, or in receipt of the rents as being entitled thereto, shall, for the purpose only of

taking such measures as may be necessary for fixing the value of the land and the amount of compensation to be allowed for the same, be held as between such persons to be the person interested in the land. Act VI. 1857, sect. 7.

After collector's award or reference to arbitration, possession may be taken, and the land shall be vested absolutely in the government.

3136. When the collector or other officer has made an award or directed a reference to arbitration, he may take immediate possession of the land which shall thenceforward be vested absolutely in the government, free from all other estates, rights, titles, and interests. Act VI. 1857, sect. 8.

Magistrate to enforce surrender of land.

3137. If the collector or other officer is opposed or impeded in taking possession of such land, he shall apply to the magistrate who shall enforce the surrender of the land. Act VI. 1857, sect. 9.

Appointment of arbitrators

Collector, and person interested each to appoint one.

If joint interest.

3138. When any case is referred to arbitration, the collector or other officer, and the person interested in the land, shall, unless they concur in the appointment of a single arbitrator, each appoint one arbitrator; if there be several persons having a joint interest in the land, and they cannot agree in the appointment of an arbitrator, such disagreement shall be deemed a refusal to appoint within the meaning of the next following section. Act VI. 1857, sect. 10, cl. 1.

If several separate and distinct interests.

3139. If there be several persons having distinct and separate interests in the land, and they cannot agree in the appointment of an arbitrator on their behalf, it shall be competent to the collector or other officer (subject to the orders of the commissioner or other superior revenue authority) to refer the question of the compensation to be allowed for each of such distinct and separate interests to a separate arbitration, or to select any one of the persons interested whose interest appears to him to qualify such person to represent the others; and the person so selected shall appoint an arbitrator on behalf of all the persons interested. Act VI. 1857, sect. 10, cl. 2.

Appointment cannot be revoked without consent.

3140. In every case the appointment shall be in writing, and neither of the parties to the arbitration shall have power to revoke the same without the consent of the other. Act VI. 1857, sect. 10.

If no claimant attends, or if no arbitrator is appointed by the persons interested, the arbitrator appointed by the collector shall proceed to arbitrate.

3141. If no claimant shall have attended, or if the persons interested in the matter in dispute or authorized to act in that behalf, refuse or neglect for the period of fifteen days to appoint an arbitrator, then a single arbitrator appointed by the collector or other officer shall arbitrate the matter. Provided that the person so appointed shall not be an officer of government. Act VI. 1857, sect. 11.

Appointment of a third arbitrator

3142. When more than one arbitrator shall be appointed, the arbitrators shall, before they enter upon the matter referred to them, nominate and appoint by writing a third person to act with them as arbitrator; and in case the arbitrators shall neglect to appoint such third person for a period of one week after having been required to do so, the collector or other officer shall appoint a third arbitrator. Act VI. 1857, sect. 12.

Arbitrator refusing or becoming incapable to act, &c.

3143. If any person, on being appointed an arbitrator, shall refuse to act, or, after accepting the appointment, shall die or become incapable of acting, another person shall be appointed in his stead, in the same manner in which the first person was appointed. Act VI. 1857, sect. 13.

The arbitrators may by consent determine the proportions in which the persons interested are entitled to share in the amount of compensation awarded.

3144. When the amount of compensation is referred to arbitration, it shall be competent to the collector or other officer, with the written consent of all the persons interested, to require the arbitrators to determine the proportions in which all such persons are entitled to share in the amount awarded. Act VI. 1857, sect. 14.

Appointment of arbitrators by consent to apportion the compensation in cases where the amount thereof has been agreed upon or has been settled by arbitration.

3145. When the collector or other officer and the persons interested in the land agree as to the amount of compensation, or when such amount shall have been settled by arbitration, if any dispute shall arise as to the apportionment of the same or any part thereof, it shall be competent to the collector or other officer, with the written consent of all persons interested in the matter in dispute, to refer the same to arbitration. If the parties cannot agree with respect to the nomination of the arbitrators, or if the persons nominated by them shall refuse to accept the arbitration, or, having accepted it, shall refuse to act, and the parties are desirous that the nomination shall be made by the collector or other officer, he shall appoint some proper person or persons to arbitrate the matter. The provisions of this Act relating to arbitrators appointed under sections 10 and 11 and to the proceedings of such arbitrators shall be applicable to persons appointed arbitrators under this section. Act VI. 1857, sect. 15.

Collector to exercise certain powers for securing attendance of arbitrators and completion of award.

3146. After the arbitrators have accepted the appointment, the collector or other officer shall be competent to exercise towards them such powers and authority for securing their attendance and the due completion of their award, as the collector may legally exercise towards witnesses summoned before him when acting judicially for the purpose of compelling them to attend and give evidence. Act VI. 1857, sect. 16.

In default of award within a specified period, other arbitrators may be chosen.

3147. If no award be made within a period to be fixed for that purpose by the collector or other officer, he may order that the matter shall be referred to another arbitrator or other arbitrators to be chosen in the same manner and subject to the same rules as the first. Act VI. 1857, sect. 17.

Collector to furnish information to the arbitrators, and to enforce the attendance and examination of witnesses, &c.

3148. The collector or other officer shall furnish to the arbitrators, or so far as may be in his power procure for them, any information which his records or those of any public department may afford connected with the subject of enquiry. He shall, on the application of the arbitrators, summon any witnesses whom the arbitrators may call for and whom the parties may not be able to produce before them without such process, and require the persons so summoned to bring and produce before them all such books, papers, deeds, writings, maps, and plans, as they shall require. Persons so summoned shall be subject to all the provisions of the laws in force regarding persons summoned as witnesses before the collector when acting judicially. Act VI. 1857, sect. 18.

Witnesses to be examined upon oath, &c, before arbitrators

3149. Every witness examined before the arbitrators shall be examined upon oath or affirmation to be administered by or made before the said arbitrators. Act VI. 1857, sect. 19.

Award of the arbitrators.

3150. On the close of the enquiry, the arbitrators or a majority of them shall deliver a full and complete award in respect of the matter referred to them, and shall therein specify (as the nature of the case may require) the amount and particulars of compensation awarded by them, the persons entitled to compensation, and the proportions in which they are so entitled. Act VI. 1857, sect. 20.

Remuneration of arbitrators.

3151. The arbitrators on making their award shall be entitled to reasonable fees for their services, the amount of which shall be fixed by the collector or other officer subject to the orders of the commissioner or other superior revenue authority. Act VI. 1857, sect. 21.

Costs.

3152. The award shall declare the costs of the arbitration and by whom and in what proportion they shall be paid. All costs, including the fees of the arbitrators, incurred for the purpose only of determining the amount of compensation to be allowed for the land, shall be charged to the government, unless the arbitrators shall award as compensation the same or a less sum than shall have been offered by the collector or other officer, in which case each party shall bear his own costs so incurred and shall also pay a moiety of the fees of the arbitrators. Costs incurred for determining the apportionment of the compensation among the persons interested shall be paid by such persons in such proportions as the arbitrators shall direct. Act VI. 1857, sect. 22.

Proceedings of the arbitration to be deposited in the collector's office.

3153. The proceedings of the arbitration shall be deposited in the office of the collector or other officer; and every person interested therein shall be entitled to a copy of the award on plain paper under the seal and signature of the collector or other officer, which copy shall be *prima facie* evidence thereof. Act VI. 1857, sect. 23.

Compensation to include damage done to adjoining land.

3154. When any land is taken under the provisions of this Act, the amount of compensation to be awarded shall include any damage which may be sustained by any of the persons interested therein in respect of any adjoining land held therewith. Act VI. 1857, sect. 24.

If compensation be awarded for damage, the value of the land and the amount of damage to be specified separately.

3155. If any compensation beyond the value of the land be awarded on account of any damage which may be sustained by any person interested in the land, the award shall specify the value of the land and the amount of such damage separately, and also the name of the person to whom compensation for damage is awarded. Act VI. 1857, sect. 25.

Proceeding where land paying revenue to government is taken.

3156. When any land taken under this Act forms part of an estate paying revenue to government, the award shall specify the net rent of the land including the government revenue, and the computed value of such rent: and it shall be at the discretion of the revenue authorities either to pay over the whole of such value to the owner of the estate on the condition of his continuing to pay the jumma thereof without abatement; or to determine what proportion of the net rent shall be allowed as a remission of revenue, in which case a deduction shall be made from the said value proportionate to the value of such remission. Act VI. 1857, sect. 26.

Amount of compensation when and how to be paid.

3157. When the amount of compensation to be paid for land taken under the provisions of this Act is determined by the award of the collector or other officer under section 5, he shall pay the amount awarded at the time when possession is taken of the land on account of government. When the compensation is determined by the award of arbitrators under section 20, the collector or other officer shall pay the amount awarded with interest at the rate of 6 per centum per annum from the time when possession was taken of the land on account of government. Act VI. 1857, sect. 27.

Payment of compensation to whom to be made.

3158. Except as provided in the next following section, payment of the compensation shall be made, according to the award, to the persons named therein. Provided

always that nothing in this Act contained shall affect the liability of any person who may receive the compensation awarded for any land or any portion of such compensation to pay the same to the person lawfully entitled thereto. Act VI. 1857, sect. 28. Proviso.

3159. If there exist any ground which, in the judgment of the collector or other officer, renders it improper to make immediate payment of the compensation, or of any portion thereof, to any of the persons having or claiming any interest in the land or in the compensation awarded in respect thereof, the amount, or such portion of the amount as he may deem sufficient, shall be invested in government securities, and held in deposit until an order of court shall be obtained for the payment thereof. Such order shall be obtained in the court which would have had jurisdiction in respect of the land taken. Act VI. 1857, sect. 29. Payment of compensation may in certain cases be deferred. Amount to be held in deposit until an order of court is obtained for payment thereof.

3160. If the land taken be within the local limits of any of her majesty's supreme courts of judicature, and the amount of compensation awarded do not exceed five hundred rupees, the order may be made by the court of small causes. Act VI. 1857, sect. 30. In certain cases the small cause court may order payment.

3161. No award of arbitrators made in accordance with the provisions of this Act, shall be liable to be reversed or altered, except by the decision of a civil court on the ground of corruption or misconduct of the arbitrators. In case the award shall be so reversed, the matter shall be referred to another arbitrator or other arbitrators to be appointed in the same manner as the first. All suits to set aside an award under this Act shall be instituted within three months from the date of the award. Act VI. 1857, sect. 31. Reversal or alteration of award.

3162. The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house or other building or manufactory, if the owner desire that the whole of such house, building, or manufactory shall be taken. Act VI. 1857, sect. 32. A part of a house or building not to be taken.

3163. Whenever any land is needed for a road, canal, railway, or the like, and the local government makes the declaration provided in section 2, it shall not be necessary to specify the extent, limits, or position of the land, but it shall be sufficient to declare the general direction of the line of the work and the average breadth of the land required for the same. Act VI. 1857, sect. 33. When land is needed for a road, canal, &c, the general direction of the line shall be declared.

3164. When declaration has been made under the provisons of section 2 of this Act, the collector or other officer may authorize any person, with his servants and workmen, to enter upon the land for the purpose of making a survey thereof; and in the case of a road, canal, or railway, to set out the intended line thereof, and to mark such line by cutting a trench or placing land-marks; and where otherwise the survey cannot be completed, and the line marked, to cut down and clear away any part of any jungle or tope of trees in the direction of the intended line. Provided that no person shall enter into any house or building or upon the curtilage of any house or any enclosed garden (unless with the consent of the occupier thereof) without previously giving the said occupier twenty-four hours' notice of his intention to do so. Act VI. 1857, sect. 34. After declaration, persons authorized may enter upon the land and make a survey. Line of road may be marked out. Land may be cleared. Previous notice of entry to be given to occupiers of houses, &c.

3165. It shall be the duty of the collector or other officer to take account of all necessary damage done as aforesaid, and forthwith to offer payment for the same to the Account of damage to be taken and payment to be offered.

persons interested. In case the offer is not accepted, the damage shall be allowed for in the compensation to be awarded. Act VI. 1857, sect. 35.

Obstruction to setting out line of works, &c.

3166. Whoever wilfully obstructs any person in lawfully setting out the line of any road, canal, or railway, or wilfully destroys, damages, or displaces any landmark, or effaces or fills any trench intended to mark such line, shall, on conviction, be liable to be imprisoned for any term not exceeding six months, or to fine not exceeding two hundred rupees, or to both. Act VI. 1857, sect. 36.

Temporary occupation of adjacent land.

3167. The powers of this Act shall extend, in the case of any road, canal, or railway, to authorize the temporary occupation of any land not more than one hundred yards from the centre line of the road, canal, or railway, as marked on the ground, for taking earth or other materials for making or repairing the road, canal, or railway, or for depositing thereon superfluous earth or other materials, or erecting temporary buildings and workshops thereon, and of any land which may be needed for making temporary roads from any public road to the intended line of railway. And for the temporary occupation of any such land, and for any permanent damage done by such occupation and use of the land, including the full value of all clay, stone, gravel, sand, and other materials taken thence, compensation shall be paid to and among all persons having an interest therein, to be ascertained, in case of disagreement, in the same manner as compensation for land permanently taken. Act VI. 1857, sect. 37.

Compensation for temporary occupation.

Trustees, committees of lunatics, &c. empowered to act.

3168. In any proceedings under this Act the following persons shall be deemed persons entitled to act as and to the extent hereinafter provided (that is to say)—A trustee or trustees for other persons beneficially interested shall in all cases be deemed the person or persons entitled to act with reference to any such proceedings, and that to the same extent as the persons beneficially interested could have acted if free from disability. A married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age. The guardians of minors and the committees of lunatics or idiots shall be deemed respectively the persons so entitled to act to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted. Act VI. 1857, sect. 38.

Interpretation of the terms,

local government,

land,

3169. The following words and expressions in this Act shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction (that is to say)—The words "the local government" shall mean the person or persons for the time being immediately administering the executive government of that portion of the territories in the possession and under the government of the East India Company in which the land in question is situate; and shall include any chief commissioner or other chief civil officer of a province whom the governor general in council may authorize to exercise the powers vested by this Act in the local government. The word "land" shall extend to tenements and hereditaments of any tenure, and all houses, buildings, trees, or appurtenances thereupon, as well as land.

The expression "person interested in the land" shall include all persons interested in the land either for life or for years, or in remainder, reversion, or succession, and all mortgagees, lease-holders, or tenants, not being tenants by the month or at will, of such land. Words importing the singular number only shall include the plural, and words importing the plural number only shall include the singular. Words importing the masculine gender only shall include females. The word "person" shall include a corporation. Act VI. 1857, sect. 39.

persons interested in the land,

number and gender;

persons.

SECTION IV.

OF MUNICIPAL COMMISSIONERS.

Government may extend this Act to any but the presidency towns.

3170. If it shall appear to the governor, or governor in council, or lieutenant governor, of any presidency or place within the territories under the government of the East India Company, that the inhabitants of any town or suburb, not within the towns of Calcutta, Madras, or Bombay, are desirous of making better provision for making, repairing, cleaning, lighting, or watching, any public streets, roads, drains, or tanks, or for the prevention of nuisances, or for improving the said town or suburb in any other manner, the said governor, or governor in council, or lieutenant governor, may order this Act to be put in force within such town or suburb. Act XXVI. 1850, sect. 2.

Notice to be given of all applications for extension of this Act.

3171. Whenever any application shall be made to the government for putting this Act in force in any town or suburb, notice thereof shall be given in the government gazette of the presidency, or place, and also by proclamation within such town or suburb, setting forth the purposes of the application, and giving reasonable time for all inhabitants of such town or suburb, who are so minded, to declare themselves for or against the adoption of this Act therein for such purposes or any of them. Act XXVI. 1850, sect. 3.

Government to decide upon the application, and to publish their order.

3172. The governor, or governor in council, or lieutenant governor, shall take all such declarations into due consideration, and, after the time allowed for receiving the same, shall make a final order, which shall be published in the government gazette, and also notified by proclamation within such town or suburb, to the effect that the application appears, or does not appear, to be according to the wishes of the inhabitants, either wholly, or in respect to one or more of the purposes in respect of which it is made; and if the whole or any part of it shall appear to be according to the wishes of the inhabitants, then that this Act shall be thenceforth in force in such town or suburb, for such purposes only as shall be mentioned in the order. Act XXVI. 1850, sect 4.

Act to come into force on the publication of the order

3173. Whenever any such order shall be made and published as aforesaid, this Act shall come into force within the said town or suburb, for such purposes as are mentioned in the order; and the making and publication of the said order shall be conclusive evidence that the provisions of this Act have been complied with, and that it is thenceforth in force within the said town or suburb, for such purposes as are mentioned in the order. Act XXVI. 1850, sect. 5.

Appointment of the commissioners for putting Act in force.

3174. Whenever this Act shall come into force in any town or suburb, the governor, or governor in council, or lieutenant governor, shall appoint the magistrate and such number of the inhabitants thereof as to him shall appear necessary, to be commissioners for putting the Act in force, and shall give authority to them to prepare rules for more effectually accomplishing the purposes for which they are appointed; which rules, when approved by the governor, or governor in council, or lieutenant governor, shall be of the same force within the said town or suburb, until altered or rescinded as hereinafter provided, as if they were inserted in this Act. And the said governor, or governor in council, or lieutenant governor, may remove any of the commissioners and appoint others, and may fill up vacancies occurring among the commissioners in such manner as may seem to him fit. Act XXVI. 1850, sect. 6.

Preparation of local rules.

Power of government to remove commissioners and to fill up vacancies.

Rules to be prepared.

3175. The rules to be prepared by the said commissioners shall provide, among other things, for those following, that is to say: 1. The appointment and management of all necessary officers and servants of the commissioners, and the salaries to be allowed to them. 2. The definition of the persons or property within the town or suburb to be taxed for raising the moneys necessary for the purposes of this Act, whether by house-assessment, or town-duties, or otherwise; the amount or rate of the taxes to be imposed; the manner of raising and collecting them, and ensuring the safety and due application of them when collected. 3. The manner in which from time to time the rules in force are to be amended or rescinded, and new rules are to be made, with the approval in every case of the governor, or governor in council, or lieutenant governor. 4. The definition and prohibition of nuisances within the town or suburb. 5. The imposition of reasonable penalties for breach of any rule made by the commissioners, not exceeding fifty rupees, or in the case of continuing nuisance not exceeding five rupees for every day that such nuisance is continued. Act XXVI. 1850, sect. 7.

Power of commissioners to make contracts and expend money.

3176. The commissioners appointed from time to time shall have full power to make all necessary contracts for the purposes of this Act, and apply the taxes raised as aforesaid in the necessary works, and in payment of their officers and servants, and in the other expenses incident to the execution of this Act within the said town or suburb. Act XXVI. 1850, sect. 8.

Commissioners not personally liable except for misapplication of money.

3177. No commissioner shall be personally liable for any contract made by the commissioners on behalf of the inhabitants of such town or suburb; but every commissioner shall be liable for any misapplication of the monies collected, to which he shall have been knowingly party or privy, or which shall have happened through gross neglect of his duty, and shall be liable to be sued for the same as for money due to, and at the suit of, the East India Company. Act XXVI. 1850, sect. 9.

Recovery of arrears of taxes and penalties.

3178. The powers of Act II. 1839, for the recovery of fines, shall be applied for the recovery of all arrears of taxes and penalties under this Act; and every magistrate shall put in force the powers of the said Act II. 1839 for that purpose, whenever thereunto required by the commissioners, or any of their officers deputed by them for the purposes of enforcing payment of arrears of taxes imposed under this Act. Act XXVI. 1850, sect. 10.

3179. No rate on property made under this Act shall be invalid for defect of form; and it shall be enough in any such rate on property, or any assessment of value for the purpose of making such rate, if the property rated or assessed shall be so described as to be generally known; and it shall not be necessary to name the owner or occupier thereof. Act XXVI. 1850, sect. 11.

Rates not invalid through defect of form; or if property be described as generally known.

3180. All moveable property found in any house or building, or upon any land, assessed under this Act, may be seized and sold by warrant of a magistrate for payment of any arrear of tax laid on such house, building, or land, under this Act. Act XXVI. 1850, sect. 12.

Moveable property liable to sale for arrears.

3181. All commissioners acting in execution of this Act shall, on or before the last day of April in every year, make up and send to the governor, or governor in council, or lieutenant governor, an account of all works executed by them, and of all sums received and spent by them in the foregoing year, in such form and with such vouchers as the governor, or governor in council, or lieutenant governor, shall from time to time order. Act XXVI. 1850, sect. 13.

Commissioners to render accounts.

3182. The governor, or governor in council, or lieutenant governor, may, at any time, suspend the operation of this Act in any town or suburb, and appoint any person or persons to examine and report upon the behaviour of the commissioners, or any of them, or their officers in the execution of this Act. Act XXVI. 1850, sect. 14.

Government may suspend this Act, and may appoint persons to examine the proceedings.

SECTION V.

OF CHARITABLE DISPENSARIES.

3183. The following are the rules published by the governments of Bengal and the Western Provinces for the management of all charitable dispensaries supported or aided by the government. *Rule* 1. The collector, magistrate, and civil surgeon of the district shall be *ex-officio* members of the local committee of management. *Rule* 2. The government may appoint any other person, whether a public servant or a subscriber to the dispensary, to be a member of the committee. *Rule* 3. The commissioner of the division shall be *ex-officio* a member of the committee, and shall preside at any meeting at which he may be present. He shall have a casting vote, in addition to his own vote, if present, and a casting vote if absent, when opinions are equally divided. *Rule* 4. All correspondence between the government and the local committee shall be conducted through the medium of the commissioner. *Rule* 5. Each committee shall submit to government, through the commissioner, half-yearly returns (made up to June 30th and December 31st in each year) of the number of patients treated, and of receipts and disbursements, in the accompanying forms. These returns are exclusive of the professional reports submitted to the medical board. *Rule* 6. Each committee shall appoint its own secretary, whose duty it shall be to see that proper returns and accounts are kept. *Rule* 7. Each committee

Collector, magistrate and civil surgeon to be *ex-officio* members.

Government may appoint any other person.

Commissioner to be an *ex-officio* member and to preside and have a casting vote.

Correspondence to pass through commissioner.

Half-yearly returns of patients and of receipts and disbursements.

Committee to appoint its own secretary.

Committee to keep minutes of proceedings in a book.

shall keep a book, in which are to be entered minutes of all its proceedings and resolutions. The proceedings of each meeting shall be attested by the members present. *Rule* 8. In all matters of a strictly professional description, the committee shall be guided by such instructions as they may receive from the superintending surgeon of the division.

In professional matters to be guided by superintending surgeon.

Form of half-yearly return of patients.

Half-yearly return of patients treated in the charitable dispensary from the to the

	Remaining on the	Admitted.	Total.	Cured.	Relieved.	Incurable.	Died.	Result not known.	Remaining under treatment.
In-door patients, ...									
Out-door patients, ...									
Total,.....									

Form of half-yearly cash account.

Half-yearly cash account of the charitable dispensary from the to the

Dr.						*Cr.*					
To balance in hand on the						By amount pay of establishment from					
„ Subscriptions collected from to						„ Amount paid for supplied to the in-patients at					
„ Government donation drawn from the month of up to at rs. per mensem under orders dated the						„ Ditto for half-yearly supply of clothes to the in-patients in list					
„ Interest upon government promissory notes drawn in						„ Ditto ditto paid to two extra native doctors employed in cholera stations in the city,					
&c. &c.						Balance in hand,.....					
Total, Co.'s Rs.,.....						Total, Co.'s Rs.,.....					

Govt. Order *L. P.* October 5, 1853; and *W. P.* No. 2132 A, November 17, 1853.

Monthly report of cases.

3184. Sub-assistant surgeons are required to submit monthly a detailed report of one medical and one surgical case for the information of superintending surgeons through the civil surgeon, who is to certify that the cases as reported are correct transcripts from the original copies entered in the register. Govt. Order *W. P.* No. 2404 A, December 28, 1853.

Superintending surgeon.

3185. Superintending surgeons are *ex-officio* members of the dispensary committees within their several circles in the Western Provinces. Govt. Order *W. P.* No. 2404 A, December 28, 1853.

CHAPTER III.

OF LOCAL NUISANCES.

Magistrate is empowered to suppress local nuisances.

3186. It is lawful for any magistrate, when the public benefit and comfort are in question, to cause unlawful obstructions and nuisances to be removed from thoroughfares and public places; and to suppress, or cause to be removed to a different place, trades or occupations injurious to the health or comfort of the community; and to prevent such construction of buildings and such disposal of combustible substances, as appear to him likely to occasion conflagration; and to cause the removal of buildings in such state of weakness, as, by the probability of their falling, appear to him to expose individuals to danger. Act XXI. 1841, sect. 1.

This does not apply to disputes between private parties for right of thoroughfare.

3187. This enactment is applicable only to cases of unlawful obstruction of public thoroughfares when the public benefit and comfort are in question. In cases where the right of use of any thoroughfare is disputed merely between some private parties, the magistrate should decide the case under sect. 6, Act IV. 1840. Reports *L. P.* 1853, part 1, page 578.

But empowers the magistrate to remove obstructions from any public road.

3188. But a magistrate is clearly empowered to remove all obstructions whether absolute or partial on public roads. And there is nothing in the law, which limits the jurisdiction of the magistrate in interfering for the public benefit in regard to any description of land within the district under his charge. Letter of N. A. to Judge of 24-Pergunnahs, No. 246, March 17, 1854.

He is to issue an injunction, or proclamation and written notice, to the parties concerned.

3189. In exercising the authority conferred by the above section, the magistrate, after holding such enquiry as satisfies him of the necessity of proceeding under this Act, is to issue an injunction, which, if practicable, is to be served personally on the parties concerned; but if such service is impracticable or very inconvenient, the injunction is to be notified by oral proclamation, and a written notice thereof is to be set up at such place or places as may be best adapted for conveying information to the parties concerned. And in case such injunction is not obeyed, the magistrate may compel observance thereof by force, and punish disobedience by fine not exceeding 200 rupees, or by imprisonment without labor for any period not exceeding one month. And if the magistrate finds it necessary to incur expense in removing noxious or dangerous articles or buildings, it is lawful for him to sell the same or their materials by public auction in order to defray the charge, delivering any surplus that may remain to the owner. And it is lawful for the magistrate to compel, under the like penalty, the owners of tanks or wells, adjacent to any public thoroughfares, to fence the same in such manner as to prevent danger to the public arising therefrom. Act XXI. 1841, sect. 2.

Power to compel observance thereof by force, and punishment of disobedience.

Enclosure of wells and tanks.

Person affected by such order may claim the appointment of a panchayat, which is to be nominated by the

3190. It is lawful for any person affected by such injunction or written notice as is above described, if he objects thereto, to claim by written petition, to be presented to the magistrate within the period of ten days if reasonably practicable (if not, within the shortest reasonable further time from the receipt of such injunction or the publication of such notice),

magistrate and the claimant.

that a jury or panchayat may be appointed to try and decide the question; and the magistrate is, on receiving such petition, to pass order thereupon for the appointment of a jury or panchayat, which is to consist of not less than five persons, whereof the president and one half of the other members are to be nominated by the magistrate from the residents in the vicinity, and the remaining members are to be nominated by the party petitioning. And the magistrate is to suspend the further execution of the injunction or order pending such enquiry, and to be guided by the decision of the said jury, which is to be according to the opinion of the majority. Provided however that if the petitioner, by neglect or in any other way, prevents the appointment of such jury or panchayat, or if from any cause the jury so appointed does not decide and report within a reasonable time to be fixed in the order for their appointment, their functions are to cease from the date of the expiration of such period, unless they are continued by special order of the magistrate; and if from any of the above causes no decision is made by the jury or panchayat, the magistrate's order is to take effect as if not opposed. Act XXI. 1841, sect. 3.

Magistrate to be guided by the decision of such panchayat. But if they do not decide within prescribed time, his order is to take effect as if unopposed.

Orders of magistrate are subject to appeal,

3191. All the proceedings of magistrates under the authority of this Act, are subject to the like appeal, as other orders of magistrates, according to the regulations. Act XXI. 1841, sect. 4.

to the session judge.

3192. All orders passed by magistrates, under the above provisions, are appealable to the session judges only. C. O. No. 157 of vol. 3.

Oppression to be avoided.

3193. Care must be taken to prevent this Act from operating oppressively toward persons affected by it. C. O. No. 131 of vol. 3. *L. P.*

Act does not extend to limits of supreme court.

3194. This Act is not applicable within the local limits of her majesty's courts of justice. Act XXI. 1841, sect. 5.

Wells, without proprietors, are to be made secure by the magistrate at the public expense.

3195. The local police officers are to ascertain from time to time the state of public wells without proprietors; and are to report to the magistrate whenever they are insecure from the want of a parapet wall or otherwise, with a statement of the expense required to make them secure. If the expense so stated is inconsiderable, and appears on inquiry to be necessary for the purpose of securing a public well, the magistrate is authorized to defray it, and to charge the amount in his monthly contingent bill with the usual explanation. But if the stated expense is in any instance more than 50 rupees, he is to transmit the police officer's report with his sentiments upon it to the superintendent of police, in conformity with the rule of sect. 17, Reg. XVII. 1816.* C. O. No. 191 of vol. 1.

* *v. para*: 3120 *et seq.*

Killing dogs, when rewards may be given for.

3196. Under the orders of government, no rewards are to be given for killing dogs, except, and subject to the sanction of the superintendent of police, on particular occasions, or when they become rabid, or serious apprehensions are otherwise entertained. C. O. Sup. Pol. *L. P.* No. 10 of 1839.

Magistrates to punish persons committing malicious injuries on public property.

3197. Magistrates are to take all the means in their power to trace out and punish persons committing malicious injuries on public property,—such as the removal of mile stones, stealth of flag stones from surface drains, destruction of bridges, and the cutting through of roads or embankments. C. O. Sup. Pol. *L. P.* No. 5 of 1841.

Embankments. L. P.

Penalty for obstructing officer or person in discharge of duty.

3198. Whoever wilfully obstructs any duly authorized person in removing or levelling any embankment, house, hut, or other building, shall be liable to be imprisoned for any time not exceeding six months, with or without labor, at the discretion of the magistrate, or to fine not exceeding two hundred rupees, commutable, if not paid, to a period of imprisonment not exceeding six months, or to both. Act XXXII. 1855, sect. 15. *L. P.*

Penalty for wilful damage to embankment by cutting, &c.

3199. Whoever wilfully, and without due authority, cuts through, or attempts to cut through, any embankment, whether public or private, or destroys, or attempts to destroy, any such embankment, or opens any sluice or water-course in any such embankment, shall be liable, on conviction before a magistrate, to be imprisoned for a term not exceeding one year, with or without labor, or to a fine not exceeding two hundred rupees commutable, if not paid, to a period of imprisonment not exceeding one year, or to both; or, if the magistrate be of opinion that such punishment is insufficient for the offence, he may commit the offender to the sessions court, in which case he shall be liable, on conviction, to imprisonment for a period not exceeding seven years, with or without labor, or to fine, or to both. Act XXXII. 1855, sect. 16. *L. P.*

Penalty for other wilful damage.

3200. Whoever damages any public embankment by making any dam or other obstruction for the purpose of diverting or opposing the current of an embanked river, without the permission of the officer in immediate charge of the embankments; or by refusing or neglecting to remove any such dam or obstruction at the proper season; or by cutting or otherwise altering the banks of any embanked river; or by removing the earth from such embankment; or by grazing or tethering any cattle or other animals on any such embankment; or by driving stakes into, or cutting or rooting out grass growing on, such embankment; or by any other wilful act destroys or diminishes the efficiency of such embankment; shall be liable, on conviction before a magistrate, to simple imprisonment for a term not exceeding six months, or to a fine not exceeding two hundred rupees, or to both. Act XXXII. 1855, sect. 17. *L. P.*

Jurisdiction of deputy or assistant magistrate under this Act.

3201. Any deputy or assistant magistrate may take cognizance of offences under this Act, and may punish offenders to the extent of the power conferred upon him by the regulations of the Bengal code, and by the Acts of the governor general of India in council, with respect to the punishment of misdemeanors. Act XXXII. 1855, sect. 18. *L. P.*

Provisions of section 13, Reg. XX. 1817 extended to this Act.

3202. The provisions of section 13, Reg. XX. 1817 shall extend to any charge or information of the offences specified in section 16 of this Act; and darogahs and other police officers shall enquire into such offences in the mode and subject to the provisions therein prescribed. Act XXXII. 1855, sect. 19. *L. P.*

Right of appeal.

3203. All sentences and orders passed by a magistrate, deputy magistrate, or assistant, under this Act, shall be appealable, subject to the general provisions which regulate appeals. Act XXXII. 1855, sect. 20. *L. P.*

W. P.

Persons guilty of cutting through embankments be-

3204. Should any person be guilty of the offence of making cuts through any of the embankments maintained at the expense of government in any other manner than that prescribed [*i. e.* by an application through the native officer in immediate charge to the

longing to government are liable to what penalties.

superintendent of the embankments], he is liable to be prosecuted criminally before the magistrate for such misdemeanor; who is to decide on the case, or to refer it to the sessions court, according to the extent of the injury done by the offender, and the punishment to which the magistrate considers him liable. Any person so offending is likewise liable to be prosecuted in the civil court for damages by any person or persons, who have sustained any loss or injury from the improper opening of the embankments. Reg. VI. 1806, sect. 12, cls. 6 and 7. *W. P.*

So, persons cutting through private embankments.

3205. The foregoing rule is applicable to the embankments repaired by the zumeendars and farmers, with this difference, that when any person is desirous that water-courses should be made through any part of such embankments, he is to apply to the zumeendar or farmer, or to the officers employed by him in superintending the repair of the embankments, from whose decision he may appeal to the officer in charge of the government embankments. Any person infringing this rule is subject to the penalties stated above, and to a civil action for damages at the suit of any individual as above mentioned. Reg. VI. 1806, sect. 13. *W. P.*

Rivers.

No bandels are allowed in navigable rivers.

3206. No bandels, or contrivances for fishing, or for any other purposes, which may tend to obstruct the free navigation of the Bhagiratthi, Jellinghi, Issamutti, Matabhanga, and Choorni rivers, or other navigable rivers and streams, for the supervision of which the government deems it necessary to provide, are to be allowed or permitted.

Punishment of persons replacing any bandels, &c. removed by the supervisor, or fixing them within certain limits in opposition to his orders.

Whenever the supervisor of rivers, with the approval of the board of revenue or other controlling authority, has removed any bandel or other contrivance for fishing, which has been fixed or sunk at any place in the said rivers to the obstruction of navigation; or has prohibited the fixing or sinking of any obstruction within any specified limits; then, if any person replaces the bandels or other contrivances removed as aforesaid, or sinks or fixes any such in opposition to the prohibition of the supervisor, the bandels or other contrivances for fishing so replaced, or fixed, or sunk, are to be destroyed; and the party offending is liable to such punishment not exceeding a fine of 50 rupees, or in default of payment imprisonment without irons in the debtor's jail for one month, as the magistrate of the district may judge adequate to the offence; provided, however, that if the offender has used violence, or been guilty of any breach of the peace, he is, on conviction, besides any further punishment to which he is subject under the general laws and regulations, liable to imprisonment in the criminal jail with hard labor for a period not exceeding 3 months, and is to be required, at the discretion of the magistrate, to furnish adequate security for keeping the peace. Reg. VIII. 1824, sect. 10.

Further punishment if the offender has used violence, or been guilty of any breach of the peace.

Punishment of persons preventing the collector or supervisor, or any of their officers, from fulfilling their duties, or forcibly resisting them in the execution thereof.

3207. Any person who, by force or threats prevents the collector of tolls, supervisor of rivers, or any of his or their officers from fulfilling the duties assigned to them by this regulation, or who forcibly resists them in the execution of those duties, or who advises or encourages such resistance, is liable, on conviction before the foujdaree court of the district, to the penalties prescribed for the offence of resisting the process of a magistrate.* Parties so offending are further liable, in the event of an affray or other breach of the peace occurring in consequence of their resistance, to be punished under the general rules applicable to such cases. Reg. VIII. 1824, sect. 11, cl. 1.

* v. *para.* 1726 *et seq.*

Collector supervisor, &c. how to proceed if forcible resistance is apprehended.

3208. If the collector, supervisor, or other officer aforesaid, has in any case reason to apprehend forcible resistance, he is to apply to the nearest darogah to aid him in the execution of his duty; and all darogahs, or other officers in charge of thanas or chokees, are on such requisition being made, or its appearing to be otherwise necessary, immediately to afford the requisite assistance, under pain of dismissal from office and such fine, not exceeding 200 rupees, as the magistrate may adjudge, commutable, if not paid, to imprisonment in the dewanny jail for a period not exceeding 3 months. Provided also that if any zumeendar, talookdar, or other proprietor or farmer of land, or the naib, gomashtah, or other local agent of such proprietor or farmer, wilfully permits any one to resist the collector, supervisor, or other officers aforesaid, within the village or lands occupied or managed by him, he is liable, on conviction before the magistrate, to a fine not exceeding 200 rupees commutable as aforesaid. Reg. VIII. 1824, sect. 11, cl. 2.

Punishment of police officers not giving assistance.

Punishment of land holder permitting such resistance within his estate.

Collector, supervisor, &c. empowered to apprehend, and make over to the police officers such offenders, together with a written charge; and the police officer is to forward them to the magistrate within 24 hours, but may accept bail.

3209. The collector, supervisor, and their native officers duly authorized by them, are authorized to arrest and deliver over to the nearest police darogah, or other police officer authorized to receive criminal complaints, any person or persons guilty of any of the offences stated in the two preceding sections, for the purpose of their being forwarded to the magistrate; and all police officers aforesaid are required, subject to the provisions hereinafter specified, to receive and safely to forward to the magistrate of the jurisdiction, within 24 hours, all offenders so delivered over. Provided always that the supervisor or his officers give at the same time a written requisition to that effect, duly attested and dated, specifying the name of the offender and the nature of the offence, and engaging that a full report shall be transmitted to the magistrate, and that all other necessary measures for the conduct of the prosecution shall be taken within ten days from the date on which the offender or offenders have been apprehended. Provided also that in such cases, if the party accused tenders sufficient bail for appearance before the magistrate, and has not been guilty of any offence which by the general regulations is not bailable, the darogah or other officer aforesaid is to accept the bail and release the party. Reg. VIII. 1824, sect. 12.

Magistrate is to discharge such persons, if the complaint is not preferred within 10 days.

3210. No person is to be detained in custody by a magistrate under the above provision beyond the period of ten days, if during that period the supervisor has not preferred his complaint, and pursued the necessary measures for the furtherance of the prosecution in the prescribed manner. Reg. VIII. 1824, sect. 13.

Supervisor may employ the government vakeel in such cases; and the collector is to supply stampt paper.

3211. The supervisor is entitled to direct the vakeel of government to conduct all criminal prosecutions instituted by him under the provisions of this regulation; and the collectors of revenue are authorized to supply the vakeel of government on application from the supervisor with the stampt paper, which is required for the purposes aforesaid. Reg. VIII. 1824, sect. 15.

Magistrate may summarily remove obstructions from the bed or banks of navigable rivers or streams;

3212. The rules contained in the first seven sections of Reg. I. 1824 [regarding the appropriation of land, &c., for public purposes; repealed by Act VI. 1857] are not to be held applicable to the removal from the bed or banks of navigable rivers, or streams, of trees, broken boats, timbers, or the like, which may obstruct, or be likely to obstruct the navigation of such rivers and streams. Such obstructions may be summarily removed

by the magistrate, or by such other officer or officers as the government may vest with the superintendence of any such river or stream, under the laws and usages applicable to the removal of nuisances, and such special provisions as may hereafter be enacted. Reg. I. 1824, sect. 8.

and any obstructions which appear to interfere with the navigation of such rivers, or with the passage of boats by tracking.

3213. Nothing in Reg. XI. 1825 [regarding claims to land gained by alluvion] is to be construed to justify any encroachments by individuals on the beds or channels of navigable rivers; or to prevent magistrates, or other officers of government who may be duly empowered for that purpose, from removing obstacles which appear to interfere with the safe and customary navigation of such rivers, or which may in any respect obstruct the passage of boats by tracking on the banks of such rivers or otherwise. Reg. XI. 1825, sect. 5.

Canals.

Lieutenant governor *W. P.* may make rules.

3214. The lieutenant governor of the North Western provinces is competent to draw out rules to regulate the levy of water-rent; and the supply of water for irrigation; and the payment of tolls and dues on boats, rafts, or floats; and admission to the benefits of navigation: on canals to which the provisions of this Act have been made applicable, as may be found most suitable to the peculiar circumstances of each. The rules thus drawn out are to be published for general information in the government gazette. Act VII. 1845, sect 2. *W. P.*

Contravention of such how punishable.

3215. Any acts done by private individuals in contravention of the rules so published, are punishable either by temporary deprivation of the benefits of the canal, or by the penalties hereinafter described. Act VII. 1845, sect. 3. *W. P.*

Obstructions to canal, damaging banks or works, or defiling the water, punishable by

3216. Whoever wilfully causes any obstruction to any canal, to which the provisions of this Act have been made applicable, or to any of the water-courses drawn and supplied therefrom, or damages the banks of the canal or the works constructed for its maintenance, or wilfully defiles the water in the canal, is liable to the penalties hereinafter described. Act VII. 1845, sect. 5. *W. P.*

fine, or imprisonment, or both.

3217. All persons offending against the provisions of this Act, or of the rules passed under this Act, are punishable on conviction before the magistrate by imprisonment without labor for a term not exceeding fourteen days, or fine to an amount not exceeding fifty rupees, or both; and in default of payment of such fine, by additional imprisonment for fourteen days. Act VII. 1845, sect. 6. *W. P.*

Mode of procedure in such cases, and record.

3218. The mode of procedure, prescribed in criminal trials by the general regulations, is applicable to trials held under sect. 6, Act VII. 1845, for breaches of the canal rules. The records of all cases, disposed of under the enactment by officers invested, under sect. 8 thereof, with the powers of joint magistrate, are to be sent by them respectively, at the end of each month, to the magistrate of the zillah, within which their jurisdiction lies, who is to place them among the records of his court, and enter the cases in his periodical returns under the heading of "canal laws, breach of," which is to be introduced into the schedule of miscellaneous offences, published with C. O. Nos. 36 and 71 of vol. 4, in its appropriate place under letter C. C. O. No. 101 of vol. 4. *W. P.*

CHAPTER IV.

OF MARRIAGES.

Preamble.

3219. Whereas by an Act passed in the session of parliament holden in the fourteenth and fifteenth years of the reign of her present majesty, entitled, "an Act for marriages in India," it was enacted (among other things) that it should be lawful for the governor general of India in council from time to time, by laws and regulations (not inconsistent with the provisions of the said Act of parliament), to be made in the manner, and subject to the provisions, by law required in respect of laws and regulations made by the said governor general of India in council, to provide for the inspection and publication of notices of marriage given under the said Act of parliament, for the custody and protection from injury of marriage register books, for appeals from and references in case of doubt by the marriage registrars in relation to marriages forbidden or protests entered under the said Act of parliament, for fixing the hours between which marriages might be solemnized under the said Act of parliament, for appointing the officers to whom certificates were to be transmitted by the marriage registrars, and generally for giving effect to the provisions of the said Act of parliament: it is hereby enacted as follows. Act V. 1852, preamble.

Form of notice and length of residence necessary.

3220. In every case of marriage intended to be solemnized in India, under the provisions of the said Act of parliament, one of the parties shall give notice in writing, in the form of schedule A(*a*) to this Act annexed, or to the like effect, to any marriage

(*a*) SCHEDULE A.

NOTICE OF MARRIAGE.

To *Mr. John Cox*, a registrar of the district of *Calcutta* in *Bengal*.

I hereby give you notice, that a marriage is intended to be had, within three calendar months from the date hereof, between me and the other party herein named and described.

Name.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel, place of worship, or building in which marriage is to be solemnized.	District in which the other party resides when the parties dwell in different districts.
James Smith, ...	*Widower*,	*Carpenter*,	*Of full age*,	16 *Clive street*, ...	23 *Days*, ...	*Union Chapel, Dhurrumtollah.*	
Martha Green,..	*Spinster*, ...	.....	*Minor*,	20 *Hastings' street*,	*More than a month*,...		

Witness my hand this *sixth* day of *May, one thousand eight hundred and fifty-two.*

(Signed) *James Smith.*

(The *Italics* in this Schedule to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.)

registrar of the district within which the parties shall have dwelt for not less than five days then next preceding, or, if the parties dwell in different districts, shall give the like notice to a marriage registrar of each district; and shall state therein the name, and surname, and the profession, or condition of each of the parties intending marriage, the dwelling-place of each of them, and the time, not being less than five days, during which each has dwelt therein, and the church, chapel, or other building in which the marriage is to be solemnized; provided that if either party shall have dwelt in the place stated in the notice during more than one calendar month, it may be stated therein that he or she hath dwelt there one month and upwards. Act V. 1852, sect. 1.

Inspection of notices.

3221. The marriage registrar shall file all such notices, and keep them with the records of his office, and shall also forthwith enter a true copy of all such notices fairly into a book, to be for that purpose furnished to him by the government, to be called the "marriage notice book;" and the marriage notice book shall be open, at all reasonable times, without fee, to all persons desirous of inspecting the same. Act V. 1852, sect. 2.

Publication of notices.

3222. The marriage registrars, or registrar, of all districts in the British territories in India, shall respectively publish all such notices of marriage given in their respective districts by causing a copy of such notices to be affixed in some conspicuous place in their respective offices, or, where such registrars are ministers of the Christian religion, ordained or otherwise set apart to the ministry of the Christian religion, such notices shall be affixed in some conspicuous place in the church or chapel or place of worship in which such ministers respectively officiate. When one of the parties intending marriage (not being a widow or widower) is under twenty-one years of age, every marriage registrar shall, within twenty-four hours after the receipt by him of the notice of such marriage, send, or cause to be sent, by the post or otherwise, a copy of such notice to all the other marriage registrars (if any) in the same district, who shall likewise affix the same in some conspicuous place in their own offices or chapels as aforesaid. Act V. 1852, sect. 3.

Suspension of certificate in the case of minors.

3223. Where, by the oath or declaration required by the sixth section of the said Act of parliament, it appears that one of the parties intending marriage (not being a widow or widower) is under twenty-one years of age, the marriage registrar shall not issue his certificate under the provisions of the second section of the said Act of parliament until the expiration of fourteen days after the entry of such notice of marriage. Act V. 1852, sect. 4.

Supreme court may order registrar to issue his certificate in less than fourteen days.

3224. When one of the parties intending marriage (not being a widow or widower) is under twenty-one years of age, and both parties intending marriage are at the time resident in any of the towns of Calcutta, Madras, or Bombay, and are desirous of being married in less than fourteen days after the entry of such notice as aforesaid, it shall be competent for both parties intending marriage to apply by petition to the supreme court of such town, or any judge thereof, for an order upon the marriage registrar to whom the notice of marriage has been given, directing him to issue his certificate at some time before the expiration of the said fourteen days required by section 4 of this Act. And it shall be competent to the said supreme court, or any judge thereof, on sufficient cause being

shown, in their or his discretion, to make an order upon such marriage registrar, directing him to issue his certificate, at any time to be mentioned in the said order, before the expiration of the said fourteen days required by section 4; and the said marriage registrar, on receipt of the said order, shall proceed to issue his certificate in accordance therewith. Act V. 1852, sect. 5.

Form of certificate.

3225. The certificate to be issued by the marriage registrar, under the provisions of the second section of the said Act of parliament, may be in the form of schedule B (*b*) to this Act annexed, or to the like effect, and the government of each presidency or place shall furnish to every marriage registrar a sufficient number of forms of certificate. Act V. 1852, sect. 6.

Notice and certificate to be translated to native Christians.

3226. When any native Christian about to be married, applies for or tenders a notice of marriage, or applies for a certificate from a marriage registrar, such marriage registrar shall ascertain whether the said native Christian understands the English language; and, if he does not, the said marriage registrar shall translate such notice or certificate, or both of them, as the case may be, or shall cause the same to be translated to such native Christian, in the language of such native Christian, or the said marriage registrar shall otherwise ascertain whether such native Christian is cognizant of the purport and effect of the said notice and certificate. Act V. 1852, sect. 7.

(*b*) SCHEDULE B.

REGISTRAR'S CERTIFICATE.

I, *John Cox*, a registrar of the district of *Calcutta* in *Bengal*, do hereby certify, that on the *6th* day of *May*, notice was duly entered in my marriage notice book of the said district of the marriage intended between the parties therein named and described, delivered under the hand of *James Smith* one of the parties, (that is to say,)

Name.	Condition.	Rank or profession.	Age.	Dwelling place.	Length of residence.	Church, chapel, place of worship, or building in which the marriage is to be solemnized.	District in which the other party dwells, when the parties dwell in different districts.
James Smith,...	*Widower*,	*Carpenter*,	*Of full age*,.....	16 *Clive street*,...	23 *Days*,...	*Union Chapel, Dhurrumtollah.*	
Martha Green,	*Spinster*,...	.....	*Minor*,	20 *Hastings street*,...	*More than a month*,		

Date of notice entered *6th May* 1852.
Date of certificate given *20th May* 1852.

The issue of this certificate has not been forbidden by any person authorized to forbid the issue thereof.

Witness my hand this *twentieth* day of *May, one thousand eight hundred and fifty-two.*

(Signed) *John Cox*, Registrar.

This certificate will be void unless the marriage is solemnized on or before the *6th* day of *August* 1852.

(The *Italics* in the schedule to be filled up as the case may be, and the blank division thereof is only to be filled up when one of the parties lives in another district.)

How issue of certificate may be forbidden.

3227. Any person authorized in that behalf may forbid the issue of the marriage registrar's certificate, by writing, at any time before the issue of such certificate, the word "forbidden" opposite to the entry of the notice of such intended marriage in the marriage notice book, and by subscribing thereto his or her name and place of abode, and his or her character in respect of either of the parties, by reason of which he or she is so authorized; and the said word "forbidden," so written and subscribed as aforesaid, shall be deemed a protest, within the meaning of the seventh section of the said Act of parliament. Act V. 1852, sect. 8.

References by the registrars in cases of doubt.

3228. In all cases where a marriage registrar, acting under the provisions of the fourth section of the said Act of parliament, shall not be satisfied that the person forbidding the issue of the certificate is authorized by law so to do; the said marriage registrar shall apply by petition (which may in all cases be on unstamped paper), where the district of such registrar is within any of the towns of Calcutta, Madras, and Bombay, to the supreme court of judicature in the presidency or place within which such district is comprised; or if such district be not within any of the said towns, then to the judge of the zillah or district within which the same is comprised; and the said petition shall state all the circumstances of the case, and pray for the order and direction of the court concerning the same; and the said supreme court, or any judge thereof, or such judge of the zillah or district, shall be empowered to examine into the allegations of the petition and the circumstances of the case in a summary way; and if upon such examination it shall appear that the person forbidding the issue of such certificate is not authorized by law so to do, such supreme court, or any judge thereof, or such judge of the zillah or district, shall declare that the person forbidding the issue of such certificate is not authorized as aforesaid, and that then and in such case such certificate shall be issued, and the like proceedings may be had under the said Act of parliament in relation to such marriage as if the issue of such certificate had not been forbidden by such person. And in all cases where a marriage registrar, appointed to act within the territories of any native prince or state in alliance with the East India Company acting under the provisions of the sixth section of the said Act of parliament, shall not be satisfied that the person forbidding the issue of the certificate is not authorized by law so to do, the said marriage registrar shall transmit a statement of all the circumstances of the case, together with all documents and papers relating thereto, to the governor general of India in council, and if it shall appear to the said governor general of India in council that the person forbidding the issue of such certificate is not authorized by law so to do, the said governor general of India in council shall declare that the party forbidding the issue of such certificate is not authorized as aforesaid, and that then and in such case such certificate shall be issued, and the like proceedings may be had under the said Act of parliament in relation to such marriage, as if the issue of such certificate had not been forbidden by such person. Act V. 1852, sect. 9.

Appeal where registrar in allied native state refuses certificate.

3229. In all cases whatsoever where a marriage registrar resident in the territories of any native prince or state in alliance with the East India Company has refused to issue his certificate, it shall be lawful for either of the parties intending marriage to apply by petition

to the governor general of India in council, and the said governor general of India in council shall be empowered to examine the allegations of the petition in a summary way, and shall decide thereon, and the decision of the said governor general of India in council shall be final, and the marriage registrar, to whom the application was originally made, shall proceed in accordance therewith. Act V. 1852, sect. 10.

Hours for marriages.

3230. Every marriage solemnized under the provisions of the said Act of parliament shall be so solemnized between the hours of six in the morning and seven in the evening. Act V. 1852, sect. 11.

Declarations made at the marriage to be translated to native Christians.

3231. When any native Christian is married under the provisions of the said Act of parliament, the party solemnizing the said marriage shall ascertain whether such native Christian understands the English language; and, if he does not, the party solemnizing the said marriage shall, at the time of the solemnization thereof, translate, or cause to be translated, to such native Christian, in the language of such native Christian, both the declarations made at such marriage in pursuance of section 9 of the said Act of parliament. Act V. 1852, sect. 12.

Proof as to notice, certificate, or hours of marriage, &c., not necessary to establish marriage.

3232. After any marriage has been solemnized under the said Act of parliament, it shall not be necessary, in support of such marriage, to give any proof in respect of the notice of marriage, or the certificate, or the translation thereof respectively, or in respect of the hours between which any marriage may be solemnized, or in respect to the said translations of the said declarations in section 9 of the said Act of parliament contained, nor shall any evidence be given to prove the contrary, in any suit touching the validity of such marriage. Act V. 1852, sect. 13.

Penalties.

3233. Every marriage registrar who shall knowingly and wilfully issue any certificate for marriage after the expiration of three calendar months after the notice shall have been entered by him as aforesaid; or who shall knowingly and wilfully issue, without the order of a competent court authorizing him so to do, any certificate for marriage, where one of the parties intending marriage (not being a widower or widow) is under twenty-one years of age, before the expiration of fourteen days after the entry of such notice; or any certificate the issue of which shall have been forbidden as aforesaid by any person authorized to forbid the issue thereof; shall be guilty of felony. And every person who shall knowingly and wilfully solemnize any marriage under the provisions of the said Act of parliament in the absence of a registrar of the district in which such marriage is solemnized; or who shall knowingly and wilfully solemnize any marriage, where one of the parties to such marriage (not being a widower or widow) is under twenty-one years of age, within fourteen days after the entry of the notice of marriage, no order for the issue of a certificate in less than fourteen days having been made by a competent court; shall be guilty of felony. Act V. 1852, sect. 14.

Certificate of marriages in allied native states to be transmitted to secretary, &c.

3234. The marriage registrars in the territories of any native prince or state in alliance with the East India Company, shall transmit the certificates mentioned and referred to in the twelfth section of the said Act of parliament to the secretary for the foreign department of the government of India. Act V. 1852, sect. 15.

Punishment for making false oath or declaration.

3235. Every person who shall knowingly and wilfully make any false oath or declaration, or sign any false notice or certificate, required by the said Act of parliament or this Act, for the purpose of procuring any marriage; and every person who shall forbid the issue of a marriage registrar's certificate, by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false; shall, on conviction, suffer the penalties of perjury. Act V. 1852, sect. 16.

Limitation of prosecution.

3236. Every prosecution under this Act shall be commenced within the space of two years after the offence committed. Act V. 1852, sect. 17

Appointment of registrars in allied native states, and as to their fees.

3237. The governor general of India in council may appoint any covenanted or uncovenanted servant of the Company being a Christian, or any minister of the Christian religion, ordained, or otherwise set apart to the ministry of the Christian religion, according to the usage of the persuasion to which he may belong, to be a marriage registrar in any district, to be assigned by the governor general of India in council in any place within the territories of any native prince or state in alliance with the East India Company. And the said marriage registrar shall be entitled to receive the following fees; that is to say, for receiving each notice of marriage one rupee, for publishing each notice of marriage two rupees, for the issuing of each certificate five rupees, for every marriage forbidden or protest entered ten rupees, and for registering each marriage three rupees; and all such fees shall be accounted for and paid over by the marriage registrar to the government treasury as in the said Act of parliament mentioned. Provided always, that in any case in which it shall appear to the satisfaction of the marriage registrar, that the parties intending marriage, or married, under the provisions of the said Act of parliament, are in indigent circumstances, it shall and may be lawful for the said marriage registrar, in his discretion, to remit some part, but not more than three-fourths, of the said fees respectively; and in each and every such case of remission of fees, the marriage registrar shall report the circumstances thereof, and the grounds on which the remission is made, for the information of the governor general of India in council. Act V. 1852, sect. 18.

Salaries of registrars.

3238. It shall be lawful for the government of each presidency or place to pay any one marriage registrar of Calcutta, Madras and Bombay, or of any other district where a considerable number of persons likely to avail themselves of this Act are resident, such salary as they shall think fit, not exceeding the sum of rupees fifty per month. Act V 1842, sect. 19.

Provision in case of illness, &c., of marriage registrar.

3239. When there is only one marriage registrar in a district, and such registrar is absent from such district, or ill, or in case of the death of the only marriage registrar in a district, or of any temporary vacancy in such office, the magistrate of such district shall act as, and be, marriage registrar thereof, during such absence, illness, or temporary vacancy as aforesaid. Act V. 1852, sect. 20.

Searches may be made and certificates given.

3240. Every marriage registrar, or other person who shall have the custody for the time being of the register of marriages under this Act, shall at all reasonable times allow searches to be made of any register book in his custody, and shall give a copy, certified under his hand, of any entry or entries in the same, on the payment of the fees hereinafter

mentioned (that is to say), for every search extending over a period of not more than one year the sum of one rupee, and four annas additional for every additional year, and the sum of one rupee for every single certificate, and all such fees shall be accounted for and paid over by the marriage registrar to the government treasury. Act V. 1852, sect. 21.

Penalty for destroying or falsifying register book, &c.

3241. Every person who shall wilfully destroy or injure, or cause to be destroyed or injured, any such register book, or the counterfoil certificates thereof, or any part or certified copy thereof; or shall falsely make or counterfeit, or cause to be falsely made or counterfeited, any part of such register book, or of such counterfoil certificates, or of certified copies thereof; or shall wilfully insert or cause to be inserted in any register book, or counterfoil copy or certified copy thereof, any false entry of any marriage; or shall wilfully give any false certificate; or shall certify any writing to be a copy or extract of any register book, or counterfoil copy thereof, knowing the same register book or counterfoil copy to be false in any part thereof; shall be guilty of felony. Act V. 1852, sect. 22.

Accidental errors may be corrected.

3242. Any person charged with the duty of registering any marriage, who shall discover any error to have been committed in the form or substance of any such entry, may, within one calendar month next after the discovery of such error, in the presence of the parties married, or, in case of their death or absence, in the presence of two other credible witnesses, who shall respectively attest the same, correct the erroneous entry according to the truth of the case, by entry in the margin without any alteration of the original entry, and shall sign the marginal entry, and add thereunto the day of the month and year when such correction shall be made; and he shall make the like marginal entry, attested in the like manner, in the counterfoil certificate thereof, to be made by him as in the said Act of parliament mentioned; and in case such counterfoil certificate shall have been already transmitted to the secretary of government of the presidency or place within which he resides, he shall make and transmit in like manner a separate counterfoil certificate of the original erroneous entry, and of the marginal correction therein made. Act V. 1852, sect. 23.

Certain registers of marriage may be kept as heretofore.

3243. Nothing in this Act contained shall be construed to extend to the registration of marriages which may be solemnized in India by persons in holy orders, or under the provisions of the Act of the 58th year of King George the Third, chapter 84; or to the registration of any marriage solemnized between any two persons professing the Jewish religion; and nothing herein contained shall affect the right of any officiating minister to receive the fees now usually paid for the performance or registration of any marriage. Act V. 1852, sect. 24.

Petitions to be on unstamped paper.

3244. All petitions presented in pursuance of section 5 of the said Act of parliament, may be so presented on unstamped paper. Act V. 1852, sect. 25.

Punishment for abetting re-marriage of Hindu widow, a minor, and whose first marriage was not consummated, without consent.

3245. If a Hindu widow re-marrying is a minor whose marriage has not been consummated, she shall not re-marry without the consent of her father; or, if she has no father, of her paternal grand-father; or, if she has no such grand-father, of her mother; or, failing all these, of her elder brother; or, failing also brothers, of her next male relative. All persons knowingly abetting a marriage made contrary to the provisions of this section shall be liable to imprisonment for any term not exceeding one year, or to fine, or both. Act XV. 1856, sect. 7.

NOTE.

An Act for marriages in India. 14 and 15 Vict. Cap. 40. 24th *July* 1851.

Whereas it is expedient to amend the law of marriages in India: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, as follows:

Marriage of Christians in India may be solemnized under this Act.

I. In every case of marriage intended to be solemnized in India after the commencement of this Act where one or both of the parties is or are a person or persons professing the Christian religion, such marriage may be solemnized under the provisions of this Act; and, where such marriage is intended to be so solemnized,

Notice of intended marriage to be given to the marriage registrar for the district.

one of the parties shall give notice in writing to the marriage registrar to be appointed under the provisions of this Act for the district, within which the parties shall have dwelt for such period then next preceding as by such laws or regulations as are hereinafter mentioned may be required, or, if the parties dwell in the districts of different marriage registrars, shall give the like notice to the marriage registrar for each district: and every such notice shall be in such form and contain such particulars as may be prescribed by such laws or regulations, and shall be open for inspection and published as by such laws or regulations may be provided.

Certificate of notice to be issued on request.

II. The marriage registrar, upon being requested so to do by or on behalf of the party by whom the notice was given, and one of the parties intending marriage having made oath or declaration as hereinafter required, shall issue under his hand a certificate of such notice having been given, and of such oath or declaration having been made; provided no lawful impediment according to the law of England be shown to the satisfaction of the marriage registrar why such certificate should not issue, and the issue of such certificate have not been sooner forbidden, in manner hereinafter mentioned, by any person or

Proviso.

persons by this Act authorized in that behalf: provided always, that where by such oath or declaration it appears that one of the parties intending marriage (not being a widower or widow) is under twenty-one years of age, the marriage registrar shall not issue such certificate until the expiration of such period after the giving of such notice as may be in this behalf provided by such laws or regulations as are hereinafter mentioned.

Who to give consent if parties under age.

III. The father, if living, of any party under twenty-one years of age, such party not being a widower or widow; or, if the father be dead, the guardian or guardians of the person of the party so under age lawfully appointed, or one of them; and, in case there be no such guardian, then the mother of such party, if unmarried; shall have authority to give consent to the marriage of such party: and such consent is hereby required for the marriage of such party so under age, unless there be no person authorized to give such consent resident in India.

Issue of registrar's certificate may be forbidden.

IV. Every person, whose consent to a marriage is required as aforesaid, is hereby authorized to forbid, in such manner as may be provided by such laws or regulations as are hereinafter mentioned, the issue of the marriage registrar's certificate; and, in case the issue of any such certificate be so forbidden, the notice and all proceedings thereupon shall be utterly void: provided always, that (subject to such laws and regulations) if either of the parties intending marriage allege that the person forbidding the issue of such certificate is not authorized by law so to do, the marriage registrar shall examine into such allegation; and, if he be satisfied that such person is not authorized as aforesaid, shall act in like manner, and the like proceedings may be had under this Act in relation to such marriage, as if the issue of such certificate had not been forbidden by such person.

Supreme court or judge of the zillah or district may relieve where consent improperly withheld.

V. If any person, whose consent is necessary to any marriage under this Act, shall be *non compos mentis*, or if any such person (other than the father) shall, without just cause, withhold his or her consent to a marriage, the parties intending marriage may apply by petition, where the person whose consent is necessary is resident within any of the towns of Calcutta, Madras, and Bombay, to the supreme court of judicature established by royal charter in the presidency or place in which such person is resident; or, if

such person be not resident within any of the said towns, then to the judge of the zillah or like district within which such person is resident; or to such other person as may for this purpose be appointed under the laws or regulations hereinafter mentioned: and the said supreme court, or any judge thereof, or such judge of the zillah or district, or such other person, shall be empowered to examine the allegations of the petition in a summary way; and, if upon such examination such marriage appear proper, such supreme court, or any judge thereof, or such judge of the zillah or district, or such other person, shall declare the same to be so, and such declaration shall be as good and effectual as if the person whose consent was needed had consented to the marriage: and, in case such person has forbidden the issue of the marriage registrar's certificate, such certificate shall be issued, and the like proceedings may be had under this Act in relation to the marriage, as if the issue of such certificate had not been forbidden by such person, anything hereinbefore contained to the contrary notwithstanding.

Oath or declaration to be made before issue of certificate.

VI. Before any such certificate as aforesaid shall be issued by any marriage registrar, one of the parties intending marriage shall appear personally before such marriage registrar, and shall make oath, or shall make his or her solemn declaration instead of an oath, that he or she believeth that there is not any impediment of kindred or affinity or other lawful hindrance to the said marriage, and that both the parties to the intended marriage have, or (where the parties have dwelt in the districts of different marriage registrars) that the party making such oath or declaration hath, for the period required by such laws or regulations as are hereinafter mentioned, had their, his, or her, usual place of abode within the district of such marriage registrar; and, where either or each of the parties, not being a widower or widow, is under the age of twenty-one years, that the consent of the person or persons, whose consent to such marriage is required by law, has been obtained thereto, or that there is no person resident within the territories under the government of the East India Company having authority to give such consent, as the case may be: provided always, that where under the foregoing provision the said supreme court, or a judge thereof, or such judge of the zillah or like district, or such other person as aforesaid, declares the marriage to be proper, it shall not be necessary to make oath or declare that such consent has been obtained to such marriage.

Protest against issue of certificate may be entered.

VII. Any person may, in manner provided by such laws or regulations, enter a protest with the marriage registrar against the issue of a certificate for the marriage of any person named therein; and, if any protest be so entered, no certificate shall issue until the marriage registrar shall have examined into the matter of the protest, and is satisfied that it ought not to obstruct the issue of certificate for the said marriage, or until the protest be withdrawn by the party who entered the same.

Appeal where registrar refuses certificate.

VIII. In all cases whatsoever where the marriage registrar has refused such certificate as aforesaid, it shall be lawful for either of the parties intending marriage to apply by petition, where the district of such registrar is within any of the towns of Calcutta, Madras, and Bombay, to the supreme court of judicature established by royal charter in the presidency or place within which such district is comprised; or, if such district be not within any of the said towns, then to the judge of the zillah or like district within which the same is comprised, or to such other person as may for this purpose be appointed by the laws or regulations hereinafter mentioned: and the said supreme court, or any judge thereof, or such judge of the zillah or like district, or such other person, shall be empowered to examine the allegations of the petition in a summary way, and shall decide thereon; and the decision of such supreme court, or a judge thereof, or of such judge of the zillah or like district, or of such other person, shall be final, and the marriage registrar to whom the application was originally made shall proceed in accordance therewith, anything hereinbefore contained notwithstanding.

After issue of certificate, marriage may be solemnized in the presence of marriage registrar and two witnesses.

IX. After the issue of the certificate of the marriage registrar; or, where notice is required to be given under this Act to the marriage registrars for different districts, after the issue of the certificates of the marriage registrars for such districts; marriages may be solemnized between and by the parties described in such certificate or certificates according to such form and ceremony as they may see fit to adopt: provided nevertheless, that every such marriage shall be solemnized between such hours as shall

be fixed by the laws or regulations hereinafter mentioned, in the presence of some marriage registrar, to whom shall be delivered such certificate or certificates as aforesaid, and of two or more witnesses; provided also, that in some part of the ceremony each of the parties shall declare,

'I do solemnly declare, that I know not of any lawful impediment why I, *A. B.*, may not be joined in matrimony to *C. D*'; or shall declare to the like effect.

And each of the parties shall say to the other

I call upon these persons here present to witness, that I, *A. B.*, do take thee, *C. D.*, to be my lawful wedded wife [*or* husband];' or words to the like effect.

Provided also, that there be no lawful impediment to the marriage of such parties.

When marriage is not had within three months after notice, a new notice required.

X. Whenever a marriage is not had within three calendar months after the notice shall have been so entered by the marriage registrar, the notice, and the certificate which may have been issued thereupon, and all other proceedings thereupon, shall be utterly void; and no person shall proceed to solemnize the marriage, nor shall any marriage registrar register the same, until new notice shall have been given, and entry made, and certificate thereof given, at the time and in the manner aforesaid.

Marriages to be registered.

XI. After the solemnization of any marriage under this Act the marriage registrar present at the solemnization thereof shall forthwith register such marriage in duplicate, that is to say, in a marriage register book according to the form of schedule to this Act annexed, and also in a certificate attached to the marriage register book, as a counterfoil; and the entry of such marriage in both the certificate and the marriage register book shall be signed by the person by or before whom the marriage has been solemnized, if there be any such person, and by the marriage registrar present at such marriage, whether or not the marriage is solemnized by him, and also by the parties married, and attested by two witnesses; and every such entry shall be made in order from the beginning to the end of the book, and the number of the certificate shall correspond with that of the entry in the marriage register book.

Certificates of marriages to be transmitted periodically to the secretary of government, &c.

XII. The marriage registrar shall forthwith separate the certificate from the marriage register book, and transmit it, at the end of every month, to the secretary to the government of the presidency or place within which he resides, or to such other officer as may for this purpose be appointed under the laws or regulations hereinafter mentioned; and, if no marriage have been registered during such month, the marriage registrar shall certify such fact under his hand, and such certificate shall be transmitted as aforesaid; and the marriage registrar shall keep safely the said register book until it be filled, and shall then transmit the same to the secretary to the government, or to such other officer as aforesaid, to be kept by him with the records of his office; provided that with regard to those marriages so certified, of which it may appear to the governor general in council desirable that evidence should be transmitted to England, the secretary to the government, or such other officer as aforesaid, shall, at the end of every three calendar months in each year, send all the certificates of marriage sent to him as aforesaid during such three months, signed by him, to the secretary of the East India Company, for the purpose of being delivered to the registrar general of births, deaths, and marriages in England.

Proof of residence of parties or consent not necessary to establish marriage.

XIII. After any marriage has been solemnized under this Act, it shall not be necessary, in support of such marriage, to give any proof in respect of the dwelling of the parties, or of the consent of any person whose consent is thereunto required by law; nor shall any evidence be given to prove the contrary in any suit touching the validity of such marriage.

Registrar may ask certain particulars of parties.

XIV. It shall be lawful for the marriage registrar before whom any marriage is solemnized according to the provisions of this Act to ask of the parties to be married the several particulars required to be registered touching such marriage.

Persons vexatiously entering protests liable to costs and damages.

XV. Every person who shall enter a protest with the marriage registrar against the issue of any certificate on grounds which such marriage registrar, or the supreme court of the presidency or place, or any judge thereof, or the judge of the zillah or like district, or other person, to whom upon the refusal of such certificate an application is authorized by this Act, declares to be frivolous, and such as ought not

to obstruct the issue of the certificate, shall be liable for the costs of all proceedings in relation thereto, and for damages to be recovered by suit by the party against whose marriage such protest was entered.

Punishment of persons making false oath or declaration.

XVI. Every person who shall knowingly and wilfully make any false oath or false declaration, or sign any false notice or certificate, required by this Act, or by any such laws or regulations as are hereinafter mentioned, for the purpose of procuring any marriage; and every person who shall forbid the issue of any marriage registrar's certificate by falsely representing himself or herself to be a person whose consent to such marriage is required by law, knowing such representation to be false; shall, on conviction, be liable to be punished in such manner as by such laws or regulations may be provided.

Limitation of prosecution.

XVII. Every prosecution under this Act shall be commenced within such time after the offence committed as by such laws or regulations may be provided.

Government of each presidency may appoint marriage registrars, &c. governor general may appoint in certain cases.

XVIII. The government of each presidency or place in India may appoint marriage registrars for the purposes of this Act, and may assign districts to the registrars so to be appointed; and in respect of any place within the territories of any native prince or state in alliance with the East India Company, the governor general of India in council may appoint such marriage registrars and assign to them districts.

Government of each presidency may appoint fees to be taken under this Act, to be accounted for by marriage registrars.

XIX. The government of each such presidency and place may from time to time appoint reasonable fees to be taken of the parties intending marriage, for receiving and publishing notices of marriage, and for issuing certificates, entering protests, and registering marriages under this Act; and all such fees shall be accounted for and paid over by the marriage registrars to the government treasury, and the government shall provide all necessary books and papers for giving effect to the provisions of this Act.

Governor general in council empowered to make laws and regulations for the purposes of this Act.

XX. It shall be lawful for the governor general of India in council from time to time, by laws and regulations (not inconsistent with the provisions of this Act,) to be made in the manner and subject to the provisions by law required in respect of laws and regulations made by the said governor general in council, to provide for the inspection and publication of notices of marriage given under this Act; for the custody and protection from injury of marriage register books; for appeals from and references in cases of doubt by the marriage registrars in relation to marriages forbidden or protests entered under this Act; for fixing the hours between which marriages may be solemnized under this Act; for appointing the officers to whom certificates are to be transmitted by the marriage registrars; and generally for giving effect to the provisions of this Act.

Marriages may continue to be solemnized as heretofore.

XXI. Nothing herein contained shall invalidate or affect any marriage which may be solemnized in India by persons in holy orders, or any marriages which may be solemnized under the provisions of the Act of the fifty-eighth year of King George the Third, chapter eighty-four, or any other marriages which under the laws for the time being in force in India might have been there solemnized in case this Act had not been passed: provided that it shall be lawful for the governor general of India in council from time to time, by laws and regulations to be made as aforesaid, to provide for the registration of any marriages solemnized in India by persons in holy orders, or of any marriages there solemnized under the provisions of the said Act of the fifty-eighth year of King George the Third, chapter eighty-four, or of any other marriages there solemnized, of which it may appear to the said governor general in council desirable that evidence should be transmitted to England; and to provide for the care and custody of the registers of such marriages; and for the transmission of certificates thereof to the secretaries of the governments of the respective presidencies, or to other officers; and for their sending the same to the secretary of the East India Company, for the purpose of being delivered to the registrar general of births, deaths, and marriages in England; and also to provide for the authentication of such certificates.

Power of governor general in council to make laws for the regulations of marriages not solemnized under this Act.

Certificates delivered to registrar general under this Act, or under any laws or regulations made there-

XXII. The certificates which shall be delivered to the registrar general of births, deaths, and marriages in England under this Act, or under any laws or regulations to be made thereunder, shall be kept in the general register office, in the same manner; and indexes thereof shall be made and searches permitted, and copies thereof, sealed or stamped with the seal of the general register office, shall be given; in the like manner as

under to be subject to the provisions of 6 and 7 W 4. c. 86.

by the Act of the session holden in the sixth and seventh years of King William the Fourth, chapter eighty-six, is provided concerning the certified copies (kept in such office under the said Act) of the registers of births, deaths and marriages in England; and every certified copy, purporting to be sealed or stamped with the seal of the said general register office, of any such certificate delivered to the said registrar general under this Act, or under such laws or regulations, shall be received as evidence of the marriage to which the same relates, without further proof of such certificate, or of any entry therein.

Marriages under this Act valid.

XXIII. All marriages solemnized under this Act shall be good and valid in law to all intents and purposes.

Certain marriages in India confirmed.

XXIV. And whereas it is expedient to remove all doubt concerning the validity of marriages heretofore solemnized in India by persons not in holy orders, all such marriages, if not otherwise invalid, shall be deemed and held to be valid in law to all intents and purposes.

Interpretation of "India."

XXV. In the construction of this Act the word "India" shall include all territories for the time being under the government of the East India Company, and all territories of any native princes or states in alliance with the said Company.

Commencement of Act.

XXVI. This Act shall, so far as respects the authority to make such appointments, laws, and regulations as are herein authorized to be made, commence and take effect from and after the passing thereof, and as to all other matters and things commence and take effect from and after the first day of January, one thousand eight hundred and fifty-two, or such other day as the governor general of India shall direct.

Publication of Act.

XXVII. The governor general of India, and the governors of the several presidencies in India, shall cause this Act to be published three times in each of the government gazettes of the several presidencies, the first of such publications to be made within six weeks after this Act shall have been received in such respective presidencies.

Schedule to which this Act refers.

MARRIAGE REGISTER BOOK.

No.	When married	Name and surname.	Whether of full age or a minor	Condition	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	Rank or profession of father
1	*17th May 1851.*	*William Smith.*	*Of full age.*	*Bachelor*	*Surgeon*	*4, Clive street, Barrackpore.*	*John Smith.*	*Esquire*
		Anne Green	*Minor.*	*Widow*	- -	- -	*James Hastings*	*Esquire*

Married in the house of *A. B* by [*or* before] me, *William Johnson*, Marriage Registrar.

This marriage was solemnized between us, *William Smith*, *Anne Green*, in the presence of us, *Peter Smith*, *James Hastings.*

CERTIFICATE OF MARRIAGE.

No	When married	Name and surname.	Whether of full age or a minor.	Condition	Rank or profession.	Residence at the time of marriage.	Father's name and surname.	Rank or profession of father.
1	*17th May 1851.*	*William Smith*	*Of full age.*	*Bachelor*	*Surgeon.*	*4, Clive street, Barrackpore.*	*John Smith*	*Esquire.*
		Anne Green.	*Minor.*	*Widow*	- -	- -	*James Hastings.*	*Esquire.*

Married in the house of *A. B* by [*or* before] me, *William Johnson*, Marriage Registrar.

This marriage was solemnized between us, *William Smith*, *Anne Green*, in the presence of us, *Peter Smith*, *James Hastings.*

BOOK IV.

OF OFFENCES AGAINST GOVERNMENT.

CHAPTER I.

OF COINING.

Duties of police officers towards persons charged with or suspected of coining.

3246. The darogahs of police are to apprehend and send to the magistrate all persons uttering base coin, knowing it to be such, or who are charged with counterfeiting or debasing the current coin. On the receipt of credible information they are, under the provisions of section 16,* to proceed to search the houses of persons accused of manufacturing or knowingly uttering base or counterfeit coin; and to seize and transmit to the magistrate any such coin which is found, together with all implements used for the purpose of debasing or counterfeiting the coin; also all books of accounts relating to the sale or circulation of base coin; together with such evidence as is procurable to establish the offence imputed to the accused. Reg. XX. 1817, sect. 17.

* *v. paras.* 1658 *et seq.*

Persons charged with offences against the coin to be made over to criminal courts.

3247. Persons charged with counterfeiting, clipping, filing, drilling, defacing, or debasing the gold or silver coin, are to be committed to the criminal courts, and punished as the law directs. *Beng.* Reg. XXXV. 1793, sect. 12. *Ced. Prov.* Reg. XLV. 1803, sect. 14.

3248. The above rule is equally applicable to the copper coinage. *Ced. Prov.* Reg. XLV. 1803, sect. 51, cl. 1.

Sentence to be passed on persons convicted of forgery of counterfeit coin, public stamps, securities, or bank notes.

3249. The session judge, before whom a prisoner is convicted of having forged or procured to be forged any counterfeit coin in imitation of any of the gold, silver, or copper coins of the British government in India, or of any coin usually received as money in the British possessions in India: or of having forged, or procured to be forged, any counterfeit stamp or stampt paper in imitation of any public stamp established by the British governments in India: or any counterfeit note, or other security for money, in imitation of any of the public securities of the British governments in India, or of the bank notes issued by any public bank in the British possessions in India;—is to sentence him to receive thirty stripes,* and to be imprisoned in banishment from the district for the term of fourteen years;—unless the judge, on consideration of all the circumstances of the case, is of opinion that any part of the prescribed punishment is too severe; in which case he is authorized to mitigate the sentence to imprisonment for any period not less than seven years. Reg. XVII. 1817, sect. 9, cl. 2.

* *Commutable to 2 years' imprisonment by cl. 2, sect. 2, Reg. II.* 1834.

Power of session judge to mitigate such sentence.

If further mitigation is necessary, trial to be referred to nizamut adawlut.

3250. If in any instance the judge is of opinion that a further mitigation or remission of punishment is necessary, he is, provided he concurs in the conviction of the prisoner, to pass sentence according to the preceding clause, and to refer the trial with his sentiments at large for the final sentence or order of the nizamut adawlut. Reg. XVII. 1817, sect. 9, cl. 3.

The coins forged need not be of base metal; nor the coin imitated a legal tender.

3251. To a conviction of forgery, it is not necessary that the coins forged should be of base metal; or that the imitation be of a coin which is a legal tender of payment, provided it is current among the natives themselves. N. A. R. vol. 2, page 177.

But it seems necessary that the forged should resemble the good coin so far as to deceive people.

3252. A prisoner charged with forging counterfeit coin was acquitted, because it appeared that the pieces were intended as ornaments, and not to be passed for legal coin, being "made of pewter, very light, and so badly fabricated that any child could at once say that they were not good coin." N. A. R. vol. 3, page 198.

The coiner need not be detected in the act of forgery.

3253. To establish the charge of counterfeiting coin, it is not necessary that the criminal should be detected in the act of forging the spurious coin. N. A. R. vol. 4, page 95.

Sentence to be passed on persons convicted of using, &c. counterfeit stamps,—or of paying or tendering in payment counterfeit coin, &c.,—or of clipping, &c, the coin.

3254. If any person is convicted before a sessions court, or the court of nizamut adawlut, of the offence of using, issuing, selling, or otherwise disposing of, or attempting to dispose of, counterfeit stampt paper, bearing the imitation of a public stamp, knowing the same to be counterfeit;—or the offence of paying, or tendering in payment, counterfeited coin, bank notes, promissory notes, or other securities for money, knowing the same to be counterfeit;—or of the offence of clipping, filing, drilling, defacing, or debasing the gold or silver coin of the British governments in India, or any coin usually received as money, within the British possessions in India;—he is to be sentenced to imprisonment for such period, not exceeding seven years, as the session judge deems adequate to the nature and circumstances of the case. In every instance of a repetition of the offence, after a previous conviction and discharge, the session judge may further, at his discretion, sentence the offender to receive corporal punishment by stripes.* If a person twice convicted and discharged is again found guilty of any of the above specified offences, and the session judge is of opinion that he ought to be imprisoned for a longer period than seven years, he is to refer the trial with his sentiments for the sentence of the nizamut adawlut in pursuance of cl. 7, sect. 2, Reg. LIII. 1803. Reg. XVII. 1817, sect. 10, cl. 1, 2, and 3.

In case of aggravation or repetition.

If the offence is repeated more than twice, or very much aggravated.

* *Commutable to 2 years' imprisonment by cl. 2, sect. 2, Reg. II.* 1834.

Proof.

3255. A person cannot be convicted of passing counterfeit coin, unless it be shown that he knew it to be spurious. Reports *L. P.* 1855, part 2, page 673. Where the prisoner uttered a counterfeit coin which had been returned to him on a previous occasion as spurious, it was held that he must have had guilty knowledge at the time of utterance. Reports *W. P.* 1855, part 1, page 765.

Selling counterfeit coin for bullion is punishable as a fraud, and not under the above rule.

3256. The offence of selling counterfeit gold mohurs (much defaced) for bullion, knowing the same to be counterfeit, (though unquestionably a fraud, and punishable as such under the general regulations, and the provisions of the Mahomedan law) cannot be, held to fall within the above rule; inasmuch as the offence of "selling" counterfeit coin as bullion cannot, by any construction, be made to signify the offence of "paying or tendering

in payment." The penalties provided in the following section are applicable to such a case. Const. No. 464.

3257. The melting down gold and silver coins, for the purpose of making ornaments with the metal, is not punishable under the above provisions. Const. No. 559.

Melting down coins is not punishable.

3258. If any person, subject to the jurisdiction of a magistrate, is convicted of having in his or her possession, without lawful or satisfactory excuse, any counterfeited coin, or stampt paper, bearing an imitation of any current coin, or public stamp, and does not show good and sufficient cause for having such counterfeit coin or stampt paper in his or her possession, the person so convicted is to be sentenced by the magistrate to pay a fine equal to four times the nominal value of such counterfeit coin or stampt paper in his or her possession; one moiety of which fine is, on receipt of it, to be given to any informer or informers, who have given information of the offence and established the truth of it. In the event of such fine not being paid, the person convicted is to be confined for such period as the magistrate may direct, not exceeding six months. The counterfeit coin or stampt paper is also, in every instance, to be forwarded to the mint-master, or superintendent of stamps, respectively. Reg. XVII. 1817, sect. 11.

Sentence on person convicted of having in his possession counterfeit coin or stampt paper.

Half the fine to be given to the informer.

Disposal of such coin and paper.

3259. The above provisions are not applicable to a person carrying or conveying counterfeit coin for another, unless there is proof that he was acquainted with the nature of the coin. N. A. R. vol. 3, page 58.

But the person having the coin must be acquainted with its nature.

3260. A prisoner was tried at the sessions on a charge of uttering counterfeit coin with intent to defraud, and acquitted: the magistrate afterwards sentenced the prisoner to a fine for having the counterfeit coin in his possession: it was held that, supposing the trial before the sessions court to have included an investigation of the latter point, the magistrate was not warranted in sentencing the prisoner to a fine on the proceedings held before his commitment, after he had been acquitted by the sessions court and a warrant had been issued for his release. Const. No. 362.

Magistrate cannot punish, for having in his possession counterfeit coin, a person acquitted by the sessions court of uttering the coin with intent to defraud.

3261. The having in possession instruments of coining with intent to counterfeit the current coin, is a punishable offence under the Mahomedan law. N. A. R. vol. 5, page 170.

Having instruments with intent to counterfeit coin is an offence.

Precedents.

3262. One prisoner convicted of forging, and another of procuring the forging, of counterfeit rupees and gold mohurs, were sentenced, under the circumstances of the case, to 3 years' imprisonment with hard labor. N. A. R. vol. 2, page 177.

Forging, and procuring it.

3263. A prisoner convicted of preparing an earthen mould, with intent to forge copper coin, was sentenced, under the circumstances of the case, to imprisonment for 2 years. N. A. R. vol. 2, page 186.

Preparing earthen mould for forging.

3264. The commissioner recommended a prisoner, convicted of forging copper coin, to mercy on account of his great age (72 years) and weak intellect, and because he appeared to be the dupe of other persons who escaped, with an opinion that imprisonment for six months would answer the ends of justice. The court held that age and infirmity were insufficient grounds for mitigation to the extent proposed; and sentenced him to 3 years' imprisonment, without labor and irons. N. A. R. vol. 4, page 174.

Forging pice. Age and infirmity not sufficient excuse for slight punishment.

Having spurious pice, and instruments for manufacturing them

3265. A prisoner convicted of having in his possession counterfeit pice, and earthen moulds and other implements for fabricating the same, under circumstances indicating that the latter had recently been used in forging spurious pice, was sentenced to 2 years' imprisonment with labor. N. A. R. vol. 4, page 95.

Having implements of coining with intent to forge.

3266. Three prisoners, convicted of having in their possession implements of coining with the intent to forge coin, were sentenced,—No. 1, who had been twice before punished for forging counterfeit coin, to 7 years' imprisonment with labor in irons,—and Nos. 2 and 3 to imprisonment for 3 years without irons, and a fine of 50 rupees each in lieu of labor. N. A. R. vol. 5, page 170. The same sentence was passed in a similar case. N. A. R. vol. 6, page 340.

Vending forged stamps.

3267. Five persons convicted of vending forged stampt paper were condemned to fine and imprisonment in different degrees; but the sentence was passed under the discretionary rule of sect. 30, Reg. VI 1797, which is rescinded, and is superseded by the later provisions given above. N. A. R. vol. 1, page 22.

Forging stamps, and vending them.

3268. A prisoner charged with vending forged stampt paper, pleaded that he had received it to sell on account of another person; but he failed to substantiate this plea; and as implements of forgery were found in his house, the presumption was held that he not only sold the stampt paper, knowing it to be forged, but that he actually committed the forgery. He was sentenced to tusheer, godna, and imprisonment for 7 years,—under sect. 3, Reg. II. 1807, which has also been superseded by the provisions of Reg. XVII. 1817. N. A. R. vol. 1, page 284.

Altering the value of stampt paper.

3269. A vakeel convicted, in three cases, of altering or causing to be altered the value of a number of sheets of stampt paper, was sentenced to tusheer, and imprisonment with labor for 10 years. (*a*) N. A. R. vol. 2, page 466.

(*a*) The following information, contained in a letter from the judge of the city of Patna, to the address of the superintendent of stamps, dated the 18th of June 1825, is calculated to afford some idea of the extent to which practices similar to those which formed the subject of the above trials had been carried, and the loss to which the government had been consequently subjected in this branch of the public revenue. "I received charge of this city in the latter end of March 1825, and, so early as the commencement of April, noticed the provalence of a species of forgery, by which stamps of inferior value are made to bear a greater value, and in such a fictitious shape are used to file as original plaints, plaints of appeal &c. As it appeared to be highly important that this nefarious plan should be thoroughly sifted, that the forgers, aiders and abettors, should be brought to justice (measures which in my opinion offered the only sure means to the prevention of the offence in future) I entered at once into the investigation. In the progressive steps of the investigation, I discovered that the files of the sudder ameens, register, judge, and judges of appeal were all infected, and that the whole required to be narrowly searched. I, in consequence, determined to commence with the lower court, taking the files severally in hand, so as to allow time to the stamp vendors to give in such reports as appeared necessary, and to prevent this investigation materially interrupting the current business of the civil and criminal court. Upon an examination of the suits actually filed and undecided in the moulavi sudder ameen's court, I have discovered thirty six forged original plaints, and thirteen forged vukalut namas; and, in tracing the utterers of the forgeries, I have brought the whole home to one vakeel, by name Bhondoo Lal, who, by his defence, has thrown considerable further light upon the subject, and furnished me with information regarding his associates The stamp vendors are now compiling a report on the suits upon the file of the register previous to their entering upon the file of the judge, which, as it embraces appeals from all the lower courts, will of course contain the greatest number, and in which, upon a cursory view, I have already marked 435 forgeries. Meanwhile it chanced to occur to me, that the forgers, who would naturally seek the most advantageous out let for uttering their paper, had possibly taken advantage of sect. 11, Reg XIII. 1810,

CHAPTER II.

OF OFFENCES AGAINST THE STAMP LAWS.

Penalty for filing or recording stamped paper not duly endorsed and signed.

3270. If any deed, instrument, petition, pleading or other writing, required to be written on stamped paper, and written on the prescribed stamped paper, is filed, exhibited, or recorded in any court of judicature or public cutchery, or before any judge or other public officer, not bearing the signature and endorsement of a licensed stamp vendor (or not procured in the manner prescribed by this regulation, and duly certified to be so, when not obtained from a licensed vendor [*i. e.* stampt paper or other material obtained by individuals under sect. 11, each separate sheet or piece of which must bear on the back the signature of an officer on the establishment of the superintendent of stamps]), the person or persons filing, exhibiting, or recording the said deed, instrument, petition, pleading, or writing, or causing or procuring it to be filed, exhibited, or recorded, is to forfeit a sum equal to five times the value of the said stamped paper. If any deed, instrument, petition, pleading, or document is filed, exhibited, or recorded as aforesaid, having a forged or counterfeit stamp or signature, the person filing, exhibiting, or recording such deed, instrument, or document, that is to say, the party or his agent, who has produced the same for the purpose of being filed, exhibited, or recorded, is to forfeit to government a sum equal to twenty times the value of the stamp, which ought to have been used; unless the material, on which the same is executed, bears the signature and endorsement required by this regulation, and the party is able to show to the satisfaction of the judge or other officer conducting the enquiry on the part of government as hereinafter directed, that the material stamped with a forged stamp was purchased or obtained on the date and in the manner specified on the back, or was otherwise procured in some manner prescribed or permitted by this regulation. If the said signature and date is duly endorsed on the back of the material stamped as aforesaid with a forged impression, and the proof adduced to the fact and to the date of purchase is deemed by the judge or other officer, before whom or in whose office the deed, instrument, or other writing has been filed, exhibited, or recorded, to be sufficient, that officer is to transmit the document to the collector with a communication of his judgment in the case, in order that proceedings may be instituted against the vendor; and the collector, on payment by the party of the established duty chargeable on account of the matter of the instrument or deed in question, is

Penalty for filing such paper of which the stamp or signature is forged; unless the person filing it is able to show that he purchased it as endorsed.

In such cases courts how to proceed.

and had made fictitious prosecutions on altered stamps with a view to defraud the Honorable Company of the institution fee. I accordingly addressed the court of appeal, requesting the judges of the court to furnish me with any cases of razeenama baznama in suits which were filed during the years 1822-23; and in their reply to my letter, the judges of the court of appeal furnished me with four suits, all of which had been brought to decision by baznama. I immediately proceeded to the investigation, in the progress of which I have established that the whole four are fictitious; that the stamps of the plaints were originally of one rupee in value, have been altered so as to bear a superior value, two of them to the amount of 250 rupees, and two of 350 rupees, and that the gang concerned in filing them obtained the sum total of their apparent value, or 1200 rupees, from the treasury of the court of appeal." *Note at N, A. R. vol. 2, page 468.*

to forward it to the superintendent of stamps, in order that it may be duly stamped; the amount so paid being recoverable from the vendor or from any fine levied from him on account of the transaction.(a) Reg. X. 1829, sect, 13, cl. 1.

Persons sentenced under this regulation to be confined in civil jail, except vendors convicted of extortion.

3271. Persons sentenced to imprisonment under the provisions of this regulation are to be confined in the dewanny jail; and the civil judge is to give effect to sentences passed by the proper authorities adjudging confinement. But stamp vendors convicted of extortion under cl. 9, sect. 10 [*i. e.* of taking from a purchaser a higher price than that denoted on the stamp sold, in which case the offender is to be sentenced by the collector or other covenanted officer qualified to take cognizance of the offence to 6 months' imprisonment] are to be forwarded to the magistrate of the district to be confined in the criminal jail. Reg. X. 1829, sect. 20.

Punishment of stamp vendor rendering false account of the receipts and proceeds of sale of paper entrusted to him.

3272. If a true account of the receipts and of the proceeds of the sale of paper entrusted to him is rendered by a vendor of stamps, when required to furnish it on his removal or resignation, only the penalty prescribed in cl. 11, sect. 10, Reg. X. 1829 [*i. e.* a certain fine to be imposed by the collector] is exigible for the non-delivery of paper or money due according to the account; but, if the account rendered is false, covering embezzlement or taking credit for remittances never made, the vendor is liable, under the general regulations, to a prosecution in the criminal court for fraud and embezzlement. Const. No. 626. N. A. R. vol. 4, page 67.

CHAPTER III.

OF OFFENCES AGAINST THE POST OFFICE LAWS.

Exclusive privilege of carrying letters vested in the East India Company.

3273. Wheresoever, within the territories under the government of the East India Company, posts or post communications are, or shall be, established by the East India Company, the said East India Company shall have the exclusive privilege of conveying by post, from one place to another, all letters other than letters conveyed by her majesty's mails, except in the following cases; and shall also have the exclusive privilege of performing all the incidental services of receiving, collecting, sending, dispatching, and delivering all letters, except in the following cases, that is to say: 1. Letters sent by a private friend in his way,

(a) It appears from the above that, in the case of a paper merely requiring the prescribed endorsement and signature of the vendor, the court or authority before whom it is filed must levy the penalty:—in the case of a paper bearing such endorsement and signature, but the stamp or signature of which is forged, if the person filing it satisfies the court or authority before whom it is filed that the paper was bonâ fide sold to him, and that he has not been guilty of any offence, then the paper is to be made over to the collector to proceed against the vendor:—but if the paper, endorsement, and signature are all found to be forged, then the court or authority should proceed according to the rule in other cases of forgery; *i. e.* should make over the case to the magistrate.—For the punishment of persons guilty of forging stamps or stamp paper, or of using, issuing, or disposing of such, or of having such in their possession, see the preceding chapter "of coining."

journey, or travel, so as such letters be delivered by such friend to the person to whom they shall be directed, without hire, reward, or other profit or advantage, for receiving, carrying, or delivering the same. 2. Letters solely concerning the affairs of the sender or receiver thereof, sent by a messenger on purpose. 3. Letters solely concerning goods or other property sent either by sea or land, to be delivered with the goods or property which such letters concern, without hire, reward, or other profit or advantage, for receiving, carrying, or delivering such letters. But nothing herein contained shall authorize any person to make a collection of such excepted letters for the purpose of sending them in the manner hereby authorized. Act XVII. 1834, sect 2.

Persons prohibited from carrying or delivering letters without hire or reward.

3274. Wheresoever, within the said territories, posts or post communications are, or shall be, established by the East India Company, the following persons are expressly forbidden to collect, carry, or deliver any letter or letters, or to receive any letter for the purpose of carrying or delivering the same, although they shall not receive hire or reward for so doing, that is to say: 1. Common carriers of passengers or goods, and their drivers, servants, or agents; except letters solely concerning goods in their carriages. 2. Owners and commanders of ships, steam-boats, or other vessels passing on any river or canal, or to or from any port in the territories under the government of the East India Company, and their servants or agents; except letters solely concerning goods on board. Act XVII. 1854, sect 3.

Penalties for breach of privilege.

3275. Every person who shall convey otherwise than by the post a letter not excepted from the said exclusive privilege shall, for every letter so conveyed, forfeit a sum not exceeding fifty rupees; and every person who shall be in the practice of so conveying letters not so excepted shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees: and every person who shall perform otherwise than by the post any services incidental to conveying letters from place to place, whether by receiving, taking up, ordering, collecting, carrying, or delivering a letter or letters not excepted from the said exclusive privilege, shall forfeit for every such letter a sum not exceeding fifty rupees; and every person who shall be in the practice of so performing any such incidental services shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees: and every person who shall send a letter not excepted from the said exclusive privilege otherwise than by the post, or shall either tender or deliver a letter not so excepted in order to be sent otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty rupees; and every person who shall be in the practice of committing any of the acts last mentioned shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees: and every person who shall make a collection of excepted letters for the purpose of sending them otherwise than by the post, shall forfeit for every such letter a sum not exceeding fifty rupees; and every person who shall be in the practice of making a collection of excepted letters for such purpose shall forfeit, for every week during which the practice shall continue, a further sum not exceeding five hundred rupees. Every person who shall carry, receive, or deliver a letter, or collect letters contrary to the provisions of section 3 of this Act, shall forfeit for every such letter a sum not exceeding fifty rupees; and every person who shall

be in the practice of committing any of the acts last mentioned shall, for every week during which the practice shall be continued, forfeit a further sum not exceeding five hundred rupees. Act XVII. 1854, sect 4.

Where there is no banghy post.

3276. Where there is no banghy post established on any line of road, letters, parcels, and packets, exceeding twelve tolahs, and not exceeding forty tolahs in weight, shall be received and transmitted by the letter post. Letters shall be charged according to the scale in section 6, and newspapers, pamphlets, and other printed or engraved papers according to the scale in section 7 of this Act, as the case may be; parcels and packets shall be charged with banghy postage according to the scale in section 11 or section 12 of this Act, as the case may be, if it be certified in writing on such parcel or packet, under the full signature and address of the sender, that it does not contain any letter or other written communication, or any newspaper, pamphlet, or other printed or engraved paper. If any such certificate be false, any such thing contained in such certified letter or other article shall be charged with postage according to the rates specified in section 6 or section 7 of this Act as if sent separately, and the sender will be subject to the penalty hereinafter provided. Parcels exceeding forty tolahs, and not exceeding six hundred tolahs in weight, shall be transmitted along any such line as banghy parcels; but it shall be in the discretion of the post master or deputy post master, to whom such parcels are brought for dispatch, to forward them at such times and in such manner as may be convenient. Act XVII. 1854, sect. 15.

Letters and other articles exceeding twelve tolahs, but not exceeding forty tolahs.

Certificate.

Parcels exceeding forty tolahs.

Where banghy parcels and letter mails are conveyed in the same carriage.

3277. Whenever the post master general of any presidency shall have notified in the official gazette, that the banghy post is conveyed in the same carriage with the letter post along any line of road, it shall not be lawful to send by the banghy post any letter or written communication of less weight than twelve tolahs, or any packet of newspapers; and every person who shall knowingly send by the banghy post, along any such line of road, any such letter, written communication, or newspaper enclosed in a parcel, shall forfeit for every such offence a sum not exceeding fifty rupees, and postage shall be charged for every such letter, packet, or newspaper, as if sent separately by the letter post. Act XVII. 1854, sect. 16.

No dangerous substance to be sent by post.

3278. No person shall knowingly post, or send, or tender, or deliver in order to be sent by the post, any letter, parcel, or packet containing any explosive or other dangerous material or substance; and any person contravening this prohibition shall forfeit for every such offence a sum not exceeding two hundred rupees. Act XVII. 1854, sect. 24.

Vendors of postage stamps to be appointed.

3279. The governor general of India in council may make rules for the appointment and government of vendors of postage stamps, and thereby direct how and under what terms and conditions postage stamps may be supplied to them for sale; and whether any and what security shall be given by such vendors, and whether any and what remuneration or discount shall be allowed to them, and how and in what manner, and at what time or times such vendors shall keep and render their accounts, and pay over the proceeds of any sales made by them or re-deliver the stamps entrusted to them. Act XVII. 1854, sect. 31.

Vendors to be bound by rules.

3280. Government vendors of postage stamps shall be bound by such rules, and in case of any wilful breach thereof, shall be liable to a penalty not exceeding two hundred rupees, in addition to any other proceedings to which they may be liable. Act XVII. 1854, sect. 32.

Penalty of vendor refusing to supply stamps.

3281. Any government vendor of postage stamps, who shall be convicted of refusing or unnecessarily delaying, without reasonable excuse, to furnish postage stamps to any person desiring to purchase the same, and tendering in lawful currency the full value thereof (the stamp vendor having in his possession for sale sufficient stamps of the description and value required), shall be subject to a fine not exceeding one hundred rupees. Act XVII. 1854, sect. 33.

Penalty of vendor selling stamps for higher price than the value denoted thereby.

3282. Any government vendor of postage stamps, convicted of taking from a purchaser a higher price than the value denoted on the stamps sold, shall be deemed guilty of extortion; and shall be punished, on conviction, with imprisonment, with or without hard labor, for any term not exceeding six months, or to a fine not exceeding one hundred rupees, and shall also be liable to refund to the purchaser the whole amount proved to have been taken in excess, which amount may be recovered by such purchaser before a magistrate in the same manner as any penalty under this Act. Act XVII. 1854, sect. 34.

Penalties for forging stamps, &c.

3283. If any person shall forge or counterfeit, or cause or procure to be forged or counterfeited, any die, plate, or other instrument used for the purpose of making postage stamps; or if any person shall forge or imitate, or cause to be forged or imitated, any postage stamp; or if any such person shall knowingly, and without lawful excuse (the proof of which excuse shall lie on the person accused), have in his possession any false, forged, or counterfeited die, plate, or other instrument, resembling, or intended to resemble, either wholly or in part, any die, plate, or instrument used for the purpose aforesaid; or if any person shall stamp or mark any paper or other substance with any such false, forged, or counterfeit die, plate, or instrument as aforesaid; or if any person shall knowingly use, utter, sell, or expose for sale, or shall knowingly, and without lawful excuse (the proof of which excuse shall lie on the person accused), have in his possession any paper or other substance having thereon the impression of any such false, forged, or counterfeit die, plate, or other instrument as aforesaid; or having thereon any counterfeit stamp resembling, or intended to resemble, or to be mistaken for, a postage stamp, such person so offending, and every person knowingly aiding, abetting, or assisting such person in committing any such offence, shall be punished with imprisonment, with or without hard labor, for a term not exceeding seven years, and shall also be liable to fine. Act XVII. 1854, sect. 35, cl. 1.

Forged stamps may be seized;

3284. Any officer of police may seize and transmit to the magistrate any such forged or counterfeit die, plate, or other instrument, or any such forged or counterfeit postage stamp. Act XVII. 1854, sect. 35, cl. 2.

and searched for.

3285. Any officer of police having power by law to search for stolen property may, subject to the provisions under which he is empowered to make such search, proceed to search houses or other places in which there may be reasonable cause to suspect that there

is any such forged or counterfeit article, and shall seize and transmit to the magistrate any such counterfeit article that may be found therein. Act XVII. 1854, sect. 35, cl. 3.

Penalties for evading postage stamp duties.

3286. If any person shall fraudulently remove any postage stamp from any letter or other thing to which such stamp shall have been affixed; or if any person shall knowingly use any such stamp or stamps so fraudulently removed; or if any person shall fraudulently erase or remove, from any such stamp or stamps, any writing or other matter or thing thereon written or impressed, every person so offending shall forfeit a sum not exceeding two hundred rupees for every such offence. Act XVII. 1854, sect. 36.

Postage on unpaid letters, &c., o be paid by the eceiver.

3287. The person to whom any letter or other article, the postage of which has not been paid, shall be delivered, shall not be bound to pay the postage if he forthwith return the same unopened; but, if he open the same, he shall be bound to pay the postage due thereon. If he forthwith return the same unopened, the sender of the letter or packet shall be bound to pay the postage thereof. If any person shall refuse to pay any postage which he is legally bound to pay for any letter or other article, the same may be recovered for the use of the East India Company by any post master general, or by any officer in charge of a post office by order of a post master general, in the same manner as a fine may be recovered under this Act; and it shall be lawful for the officer in charge of any post office to withhold from the person so refusing, until such postage be paid, any other letter or packet addressed to that person, not being superscribed as on the public service. Provided always, that if a letter or other article shall appear to the satisfaction of the post master of the office of delivery to have been maliciously sent for the purpose of annoying the person to whom it is addressed, the post master of the delivery office may remit the postage. Act XVII. 1854, sect. 37.

Commanders of inward bound vessels carrying mails, how to proceed.

3288. When any vessel arrives by sea at any place within the territories under the government of the East India Company at which there is a post office, the commander of such vessel shall, as speedily as possible, cause every letter and packet on board of such vessel, which is directed to that place, and not excepted from the exclusive privilege of the post office, to be delivered either at the post office or to some officer of the post office authorized to receive the same; and if there be on board any letter or packet directed to any other place, and not excepted from the exclusive privilege aforesaid, the said commander shall, as speedily as possible, report the same to the post master of the place at which he has arrived, and shall act according to the directions he may receive from such post master, and the receipt of such post master shall discharge such commander from all responsibility in respect of such letter or packet. Every commander of a vessel who shall wilfully disobey any of the directions contained in this section, shall be punished with a fine not exceeding one thousand rupees. Act XVII. 1854, sect. 40.

Penalty.

Detention of letters on board prohibited.

3289. Every person being either the commander of a vessel inward-bound, or any one on board such vessel, who shall, within the said territories, knowingly have in his possession any letter not excepted from the privilege of the post office, after any part of the letters on board the said vessel shall have been sent to the post office, shall forfeit for every such letter a sum not exceeding fifty rupees, whether the letter be in the baggage or

on the person of the offender or otherwise in his custody; and every such person who shall detain any such letter after demand made for the same by an officer of the post office, shall forfeit for every such letter a sum not exceeding one hundred rupees. Act XVII. 1854, sect. 41.

Bounty money.

3290. For every letter delivered by the commander of any ship in conformity with the directions of section 40 of this Act, the officer in charge of the post office shall pay to the said commander the sum of one anna; and the sum of one anna shall be chargeable as postage on such letter in addition to any other postage chargeable thereon under this Act. Provided that no payment shall be made to the commander of any vessel on account of the delivery of any letter, unless the claim of such commander shall be preferred before the vessel leaves the place at which the letter was delivered, or before the expiration of two months from the date of the arrival of such vessel. Provided also, that nothing contained in sections 40, 41, and 42 of this Act shall extend to any letter or packet conveyed by her majesty's mails. Act XVII. 1854, sect. 42.

Commanders of outward bound vessels to receive mails on board.

3291. The commander of every vessel leaving any place in the said territories by sea shall receive on board of such vessel every letter and packet which he shall be required so to receive by any officer of the post office, and shall give a receipt for such letter or packet; and every commander of a vessel who shall wilfully disobey any direction contained in this section shall be punished with a fine not exceeding one thousand rupees. Act XVII. 1854, sect. 43.

Penalty for false certificate.

3292. Every person who shall, for the purpose of defrauding the post office revenue, wilfully certify, by writing, on any official or other letter or packet delivered at any post office for conveyance by post, that which is not true in respect of such letter or packet, or in respect of the whole of its contents, or shall knowingly send or deliver, or attempt to send or deliver for conveyance by post, any letter or packet with any such false certificate thereon; and every person who shall knowingly send, or permit to be sent by post, under color or pretence of an official communication, any letter, paper, writing, or other enclosure of a private nature; and every person who shall aid, abet, or conceal any of the offences in this section above-mentioned; shall, for every such offence, forfeit a sum not exceeding five hundred rupees. Act XVII. 1854, sect. 47.

Government not responsible for loss.

3293. The government shall not be responsible for any loss or damage which may occur in respect of anything entrusted to the post office for conveyance; and no person employed by the government in the post office department shall be responsible for any such loss or damage, unless that person shall cause such loss or damage, negligently, maliciously, or fraudulently. Act XVII. 1854, sect. 49.

Penalty for secreting, opening, or making away with letters, &c., by persons employed in the post office.

3294. Whoever being in the employ of the government in the post office department shall fraudulently secrete, make away with, or appropriate, any letter, parcel, or packet which may have been entrusted to him, or anything contained in any such letter, parcel, or packet, or shall mutilate or break open any such letter, parcel, or packet, or any banghy parcel, or box, with the intention of fraudulently appropriating anything therein contained,

shall be punished with imprisonment, with or without hard labor, for a term not exceeding seven years, and shall also be liable to fine. Act XVII. 1854, sect. 50.

Penalty for detaining mails.

3295. It shall not be lawful for any person, unless acting by express order of the government, to detain, except for a criminal offence, a post office messenger, whilst carrying the mails, or to detain any carriage or horse upon which the mails are being carried, or on any pretence to open a packet in transit from one post office to another; and every person who shall be guilty of any of the above-mentioned offences shall be punished with a fine not exceeding five hundred rupees. Act XVII. 1854, sect. 51.

Penalty for retaining letters, &c., delivered by mistake.

3296. Every person who shall fraudulently retain, or wilfully secrete, or make away with, or keep, or detain, or, being required to deliver up by an officer of the post office, shall neglect or refuse to deliver up a post letter or other article which ought to have been delivered to any other person, or a post letter bag containing a letter or other article or packet, which shall have been sent by the post, shall be punished, on conviction before a magistrate, with imprisonment, with or without hard labor, for a term not exceeding two years, and shall also be liable to fine. Act XVII. 1854, sect. 52.

Penalty for neglect on the part of persons employed to carry mails.

3297. Every person employed to convey or deliver any post-bag, or any letter, parcel, or packet sent by post, who shall be guilty while so employed of any act of drunkenness, carelessness, or other misconduct, whereby the safety of any such bag, or letter, parcel, or packet shall be endangered; or who shall loiter or make delay in the conveyance or delivery of any such bag, letter, parcel, or packet; or who shall not use proper care and diligence safely to convey or deliver any such bag, letter, parcel, or packet; shall be liable to a fine not exceeding fifty rupees: and any person employed to deliver a letter, parcel, or packet, sent by the post, who shall not duly deliver the same, shall, within a reasonable time, not exceeding twenty-four hours report the fact at the post office where he received such letter, parcel, or packet, and return the same; and, if any such person shall wilfully make a false report, he shall be liable to a fine not exceeding fifty rupees. Act XVII. 1854, sect. 53.

Penalty for embezzlement by persons employed in the post office.

3298. Whoever being in the employ of the government in the post office department, and being entrusted to receive money for postage duty or any other public purpose, shall fraudulently appropriate the same, shall be punished, on conviction before a magistrate, with imprisonment, with or without hard labor, for a term not exceeding two years, and shall also be liable to fine. Act XVII. 1854, sect. 54.

Penalty for fraudulently altering marks on letters, &c., by persons employed in the post office.

3299. Whoever being in such employ as is described in section 54 shall fraudulently put any wrong mark on any letter, parcel, or packet, or shall fraudulently alter, remove, or cause to disappear, any mark or stamp which is on any letter or packet, or shall fraudulently use or place with or upon any letter or packet any stamp which shall have been removed from any other letter or cover, or shall aid, abet, or conceal any of the above-named acts, shall be punished, on conviction before a magistrate, with imprisonment, with or without hard labor, for a term not exceeding two years, and shall also be liable to fine. Act XVII. 1854, sect. 55.

Penalty for incorrectly preparing documents, or secreting documents by persons employed in the post office.

3300. Whoever being in such employ as is described in section 54, and being entrusted with the preparing or keeping of any document, shall, with a fraudulent intention, prepare that document incorrectly or alter that document, or shall aid, abet, or conceal any of the above-named acts, or secrete or destroy that document, shall be punished, on conviction before a magistrate, with imprisonment, with or without hard labor, for a term not exceeding two years, and shall also be liable to fine. Act XVII. 1854, sect. 56.

Penalty for sending letters without charging postage, by persons employed as above.

3301. Whoever being in such employ as is described in section 54, shall send by post, or put into any post-bag, any unstamped letter, parcel, or packet upon which postage has not been paid or charged in the manner prescribed in this Act, intending thereby to defraud the government of the postage on such letter, parcel, or packet, or shall aid, abet, or conceal, any such acts, shall be punished, on conviction before a magistrate, with imprisonment, with or without hard labor, for a term not exceeding two years, and shall also be liable to fine. Act XVII. 1854, sect. 57.

Fines how to be recovered.

3302. Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence, by any justice of the peace for any of the presidency towns of Calcutta, Madras, and Bombay, magistrate, joint magistrate, or person lawfully exercising the powers of magistrate; and any person hereby made punishable by a justice of the peace shall be punishable upon summary conviction. Act XVII. 1854, sect. 58.

Conviction to be quashed on merits only. Form of conviction, &c.,

3303. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. Act XVII. 1854, sect. 59.

Magistrate may refer charge to his assistant.

3304. A magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only to any of his assistants, or to any deputy magistrate lawfully appointed to exercise the powers of a covenanted assistant; and in such case every such assistant or deputy magistrate may exercise all the powers vested in a magistrate, subject to all the rules applicable to criminal cases deputed to such assistants or magistrates acting judicially. Act XVII. 1854, sect. 60.

Government may authorize assistants and deputy magistrates to exercise certain powers.

3305. The local government may give general authority to any such assistant or deputy magistrate to exercise, without reference by a magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a magistrate, subject to appeal to the magistrate from any conviction by such assistant or deputy magistrate within one month from the date of the conviction. Provided that a magistrate may at any time call from any of his assistants, or from any deputy magistrate subordinate to him, any case pending before such assistant or deputy magistrate. Act XVII. 1854, sect. 61.

Fines how levied.

3306. All fines imposed under the authority of this Act, for offences punishable by fine only, by any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, or by any assistant to a magistrate or deputy magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above-named officers; and in case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless such party shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take such security by way of recognizance or otherwise; and if, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer, by warrant under his hand, may commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty rupees; and for any term not exceeding four calendar months, where the amount shall not exceed one hundred rupees; and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount. Act XVII. 1854, sect. 62.

Imprisonment if no sufficient distress, &c.

Moiety of fines to informer.

3307. A share not exceeding one moiety of every fine imposed and recovered under this Act may be awarded to the informer. Act XVII. 1854, sect. 63.

No proceedings to be taken without certain authority.

3308. No proceedings shall be taken for the recovery of any such fine without an order of government, or an order in writing of the director general of the post office, or of a post master general. Act XVII. 1854, sect. 64.

Servants of East India Company committing offences in foreign states in alliance.

3309. If any servant of the East India Company, who shall be employed by the said Company in the post office department, or shall be appointed a vendor of postage stamps, or entrusted by the said Company or any of the said local governments with the sale of postage stamps within the dominions of any foreign prince or state in alliance with the said Company, in which a post shall be established by the said Company, shall, within the dominions of such prince or state, commit any act hereby prohibited, or omit to do any act hereby required to be done by any person similarly employed, appointed, or entrusted as aforesaid within the territories under the government of the said Company, such servant of the said Company shall be guilty of an offence; and, on conviction thereof, shall be punished in the same manner as if such act had been done or omitted within the said last-mentioned territories, and every such person may be tried, convicted, and punished either by fine or otherwise, according to the nature of the offence, by any court or officer duly empowered by the governor general of India in council to take cognizance of offences committed in such dominions by servants of the East India Company, or by any court or magistrate, or other

competent officer, in any part of the territories within the government of the East India Company, in the same manner as if the offence had been committed in such part of the said territories. Act XVII. 1854, sect. 65.

Interpretation.

3310. The word "magistrate" in this act shall include joint magistrates and persons lawfully exercising the powers of magistrates, and the word "fine" shall include a penalty or forfeiture, or a sum of money due upon a forfeited recognizance. Act XVII. 1854, sect. 66.

District dâks.

3311. It shall be lawful for the governor general of India in council to frame rules for the management of all or any zumeendaree, thana, or other district dâks, and to declare, from time to time, what portions of this Act shall be applicable to such dâks and to persons employed in connexion therewith. Act XVII. 1854, sect. 70.

Letters addressed to public officers on private affairs must be prepaid; and letters sent by public officers on such affairs are to be marked "bearing."

3312. Letters which individuals address on their private affairs to any government officer must be sent pre-paid by stamps; and this rule is to be understood to include letters transmitting bills of exchange, promissory notes, receipts, government securities, &c., to any public officer. When public officers write letters on such subjects to individuals, they are to subscribe on the envelopes, with their official signatures, the words "bearing postage." Govt. Order India, August 12, 1854, rule 35.

CHAPTER IV.

OF OFFENCES AGAINST THE LAWS RELATING TO RAILWAYS.

Fares to be prepaid.

3313. No person shall enter any carriage used on any such railway, for the purpose of travelling therein, without having first paid his fare, and obtained a ticket. Every person desirous of travelling on such railway shall, upon payment of his fare, be furnished with a ticket, specifying the class of carriage and the distance for which the fare has been paid, and shall, when required, show his ticket to any servant of the said company duly authorized to examine the same, and shall deliver up such ticket upon demand, to any of the company's servants duly authorized to collect tickets. Any person not producing or delivering up his ticket, as aforesaid, shall be liable to pay the fare from the place whence the train originally started, unless he can prove that he has travelled a less distance only, in which case he shall be liable to pay the fare only from the place whence he has travelled. Act XVIII. 1854, sect. 1.

Passenger tickets to be given up on demand.

Penalty.

At intermediate stations, fares and tickets to be conditional.

3314. At the intermediate stations, the fares shall be deemed to be accepted, and the tickets furnished, only upon condition that there be room in the train for which the tickets shall be furnished. In case there shall not be room for all the passengers to whom tickets shall have been furnished, those who shall have obtained tickets for the longest distance shall have the preference; and those who shall have obtained tickets for the same distance shall have the preference according to the order in which they shall have

Proviso.

received their tickets. Provided that all officers and troops of her majesty, or of the East India Company, on duty, and all other persons on the business of the East India Company who, by virtue of any contract with the East India Company, shall be entitled to be conveyed on such railway in preference to, or in priority over the public, shall be entitled to such preference and priority without reference to the distance for which, or the order in which, they shall have received their tickets. Act XVIII. 1854, sect. 2.

Penalty for fraud.

3315. Any person who shall defraud or attempt to defraud any such railway company, by travelling, or attempting to travel, upon such railway, without having previously paid his fare; or by riding in or upon a carriage of a higher class than that for which he shall have paid his fare; or by continuing his journey in or upon any of the carriages of the company beyond the place for which he shall have paid his fare, without previously paying the fare for the additional distance, and with intent to avoid payment thereof; or who shall knowingly and wilfully refuse or neglect, on arriving at the point to which he shall have paid his fare, to quit such carriage; or who shall, in any other manner whatever, attempt to evade the payment of his fare, shall be liable to a fine not exceeding fifty rupees for each offence. Act XVIII. 1854, sect. 3.

Fine for entering carriage in motion;

or riding on the steps.

3316. Any passenger, who shall get into or upon, or attempt to get into or upon, or shall quit or attempt to quit any carriage upon any such railway, while such carriage is in motion; or who shall ride or attempt to ride upon any such railway, on the steps, or any other part of a carriage, except on those parts which are intended for the accommodation of passengers, shall be liable to a fine not exceeding twenty rupees for each offence. Act XVIII. 1854, sect. 4.

Fine for riding on engine, tender, or luggage-van.

3317. Any person other than the engine-man, and fire-man, and assistant fire-man, if any, who, without the special licence of the superintendent of locomotives, shall ride or attempt to ride upon any locomotive engine or tender upon any such railway; and any person other than the guard or breaksmen, who, without such licence as aforesaid, shall ride or attempt to ride upon such railway, in or upon any luggage-van or goods-waggon, or other vehicle not appropriated to the carriage of passengers, shall be liable to a fine not exceeding twenty rupees for each offence. Act XVIII. 1854, sect. 5.

Smoking prohibited.

3318. If any person shall smoke, either on the premises, or in or upon any of the carriages belonging to any such railway company except in places or carriages which may be specially provided for the purpose, he shall be liable to a fine not exceeding twenty rupees for each offence; and, if any person persist in infringing this regulation after being warned to desist by any of the servants of the company, such person, in addition to incurring the liability above-mentioned, may be removed by any of the servants of the company from any such carriage, and from the premises of the company, and shall forfeit his fare. Act XVIII. 1854, sect. 6.

Penalty for intoxication or nuisance.

3319. Any person who shall be in a state of intoxication, or shall commit any nuisance or act of indecency in any railway carriage, or upon any part of the premises of any such railway company; or who shall wilfully and without lawful excuse interfere with the comfort of any passenger on such railway; shall be liable to a fine not exceeding twenty rupees; and in addition to such liability the offender may be removed by any of the ser-

vants of the company from any such carriage, and also from the premises of the company, and shall forfeit his fare. Act XVIII. 1854, sect. 7.

Penalty for entering private room or carriage.

3320. If any special carriage, or portion of a carriage, or any private room or apartment, shall be provided by any such railway company for the exclusive use of females, any male person, who without lawful excuse shall enter such carriage, or portion of a carriage, or any such room or apartment, knowing the same to be exclusively appropriated as aforesaid, or shall remain therein after having been informed of its exclusive appropriation, shall be liable to a fine not exceeding one hundred rupees, and may be removed therefrom, and also from the premises of the company, by any of the servants of the company, and shall forfeit his fare. Act XVIII. 1854, sect. 8.

Power of railway company to detain goods.

3321. If any person shall fail to pay on demand any sum due to any such railway company for the conveyance of any goods, it shall be lawful for the company to detain all or any part of such goods, or, if the same shall have been removed from the premises of the company, any other goods of such person which shall then be on their premises, or shall thereafter come into their possession; and also to sell by public auction sufficient of such goods to realize the sum payable as aforesaid, and all charges and expenses of such detention and sale, and out of the proceeds of the sale, to retain the sum so payable, together with the charges and expenses aforesaid, rendering the overplus, if any, of the money arising by such sale, and such of the goods as shall remain unsold, to the person entitled thereto; or the company may recover any such sum by action at law. Act XVIII. 1854, sect. 12.

Written account of goods to be given on demand.

3322. The owner or person having the care of any goods which shall have been carried upon any such railway, or shall be brought on to the premises of any such railway company for the purpose of being carried on their railway, shall, on demand by any servant of the company appointed to receive goods to be carried on that part of the railway on which such goods shall have been carried, or shall be about to be carried, deliver to such servant an exact account in writing signed by him of the number or quantity and description of such goods. Act XVIII. 1854, sect. 13.

Penalty for false account.

3323. If any such owner or person as aforesaid shall wilfully fail to give such account to such servant of the company, or if he shall wilfully give a false account thereof, he shall, for every such offence, be liable to a fine not exceeding fifty rupees for every ton of goods, or for any parcel exceeding one hundred weight; and to a fine not exceeding twenty rupees for any quantity of goods less than a ton or for any parcel less than one hundred weight. Act XVIII. 1854, sect. 14.

Carriage of goods of a dangerous nature.

3324. No person shall carry upon any such railway any dangerous goods, or be entitled to require any such railway company to carry upon such railway any luggage or goods, which, in the judgment of the company or any of their servants, shall be of a dangerous nature; and if any person shall carry upon such railway any dangerous goods, or shall deliver to such railway company any such goods for the purpose of being carried upon such railway, without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing of the nature thereof to the book-keeper or other servant of the company to whom the same shall be delivered for the

purpose of being so carried, he shall be liable to a fine not exceeding two hundred rupees for every such offence; and it shall be lawful for any such company or any of their servants to refuse to carry any luggage or parcel that they may suspect to contain goods of a dangerous nature, and to require the same to be opened to ascertain the fact previously to carrying the same; and in case any such luggage or parcel shall be received by the company for the purpose of being carried on the railway, it shall be lawful for the company or any of their servants to stop the transit thereof, until they shall be satisfied as to the nature of the contents of the baggage or parcel. Act XVIII. 1854, sect. 15.

Penalty for obstructing servant in his duty.

3325. Any person who shall wilfully obstruct or impede any officer or servant of the company in the discharge of his duty on such railway, or any of the works, stations, or premises connected therewith, shall be liable to a fine not exceeding fifty rupees. Act XVIII. 1854, sect. 16.

Penalty for trespass.

3326. Any person who shall trespass upon any such railway, or upon any of the lands, stations, or other premises belonging to the company, shall be liable to a fine not exceeding twenty rupees; and if any such person shall refuse to leave such railway or premises on being requested to do so by any officer or servant of the company, or by any other person on behalf of the company, he shall be liable to a fine not exceeding fifty rupees, and may be immediately removed from such railway or premises by such officer, servant, or other person as aforesaid. Act XVIII. 1854, sect. 17.

Penalty for driving an animal upon or across railway.

3327. Any person who shall wilfully ride, lead, or drive upon or across any such railway any animal, except in directly crossing the said railway at any road or place appointed for that purpose, at a time at which he shall be lawfully authorized so to do, shall be liable to a fine not exceeding fifty rupees for each offence. Act XVIII. 1854, sect. 18.

Precaution if railway crosses road.

3328. If the railway cross any public carriage road on a level, the railway company shall erect, and at all times maintain good and efficient gates, either across the railway, or across the road on each side of the railway where the same shall communicate with the road, and shall employ proper persons to open and shut such gates; if such gates be across the road, they shall be kept constantly closed, except during the time when horses, cattle, carts, or carriages passing along the same shall have to cross the railway, and the gates shall be of such dimensions and so constructed as when closed to fence in the railway, and prevent cattle or horses passing along the road from entering upon the railway. If the gates be across the railway they shall be kept closed, except when engines or carriages passing along the railway shall have occasion to cross the road, and shall be of such dimensions and so constructed as when open to fence in the railway, and prevent cattle, carriages, or passengers from entering upon the railway. Provided that it shall be lawful for the local government in any case to order that the gates shall be across the road or across the railway as the government may think fit, and in such case the gates shall be erected, maintained, and closed accordingly. If any railway company shall wilfully fail to comply with the provision of this section, they shall forfeit a sum not exceeding two hundred rupees for each offence; and any magistrate or justice of the peace may, in case any such gates be not

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erected or maintained, order the company to erect and maintain the same within a time to be specified in the order; and, in case of wilful failure on the part of the railway company to comply with such order, they shall be liable to a fine not exceeding two hundred rupees for every day that they shall wilfully fail so to do. Act XVIII. 1854, section 19.

Railway to be fenced. Penalty for not fencing.

3329. Every such railway company shall be bound to erect and maintain good and sufficient fences on each side of their railway; or, failing therein, shall be liable to a fine not exceeding fifty rupees for every offence; and it shall be lawful for a magistrate or justice of the peace to order the company to erect or repair any such fence within a time to be specified in the order, and, upon failure of the company to comply with such order, they shall be liable to a fine not exceeding fifty rupees for every day that they fail so to do. Act XVIII. 1854, sect. 20.

Liability of owner of animal trespassing.

3330. The owner of any animal which shall trespass or stray upon any such railway, or upon any lands belonging to such railway company, except for want of the erection or maintenance of any fence or gate which the company is bound to erect and maintain, shall be liable to a fine not exceeding ten rupees for each animal; and it shall be lawful for the company, or any of their servants, to take or drive every animal which shall be found so trespassing to the nearest police station, there to be detained until the highest amount of fine incurred by such trespass and the expense of feeding and keeping the animal be paid, or until a magistrate shall otherwise order. A magistrate may, upon proof of the trespass, cause such animal to be sold by public auction, and the proceeds of the sale, after deducting therefrom such fine, or such a sum, not exceeding ten rupees for each animal, as the magistrate shall award to be paid in lieu of the fine to which the owner is hereby made liable, and such further sum as the magistrate shall order to be paid for the expenses of detaining, feeding, and selling such animal, shall be returned to the owner of the animal on demand. Act XVIII. 1854, sect. 21.

Penalty for injury to carriage, &c.

3331. Any person who shall unlawfully and wilfully remove or deface the number plates, or remove or extinguish any lamp, on any carriage belonging to any such railway company; or shall wilfully or negligently damage or injure any carriage, engine, waggon, truck, warehouse, building, machine, fence, or any other matter or thing belonging to such railway company, shall be liable to a fine not exceeding fifty rupees. Act XVIII. 1854, sect. 22.

Penalty for opening or not properly shutting gates.

3332. If any person for whose use or accommodation any gate shall have been set up by any such railway company on either side of such railway, or any other person, shall open such gate, or pass or attempt to pass, or drive or attempt to drive any carriage, cattle, or other animal or thing across the said railway at a time when any engine or train approaching along the same shall be in sight; or shall at any time omit to shut and fasten such gate, as soon as he and any carriage, cattle, or other animal or thing under his charge shall have passed through the same; he shall be liable to a fine not exceeding fifty rupees. Act XVIII. 1854, sect. 23.

Offender may be apprehended.

3333. If any person shall commit any offence hereby made punishable by fine, and the name and address of such person shall be unknown, or there be reason to believe that

the offender will abscond, any officer or servant of the company, or any police officer, or other person whom such officer or servant may call to his aid, may, without any warrant or written authority, lawfully apprehend and detain such offender until he can be taken before a magistrate or other officer having jurisdiction over the offence, or shall give sufficient security for his appearance before such magistrate or other officer, or shall be otherwise discharged by due course of law. Act XVIII. 1854, sect. 24.

Penalty for wilful act or omission endangering a passenger.

3334. Whoever shall wilfully do any act, or shall wilfully omit to do what he is legally bound to do, intending by such act or omission to cause, or knowing that he is thereby likely to cause, the safety of any person travelling or being upon any such railway to be endangered, shall be liable to be transported beyond sea for the term of his life, or to be imprisoned, with or without hard labor, for any term not exceeding seven years. Act XVIII. 1854, sect. 25.

Penalty for wilful act or omission in a railway officer.

3335. If any officer or servant of such railway company shall wilfully do any act which he is legally prohibited from doing, or shall wilfully or negligently omit to do what he is legally bound to do, and if, in consequence of such act or omission, the safety of any person travelling or being upon such railway shall be endangered, such officer or servant shall be liable to be imprisoned, with or without hard labor, for any term not exceeding three years, or to fine, or to both. Act XVIII. 1854, sect. 26.

Penalty for drunkenness or breach of duty by railway officer.

3336. Any officer or servant of such railway company, who shall be in a state of intoxication whilst actually employed upon the railway, or any of the works connected therewith, in the discharge of any duty; and any officer or servant of such company, who negligently shall omit to perform his duty, or shall perform the same in an improper manner, shall be liable to a fine not exceeding fifty rupees; and if the duty in any of the cases in this section above-mentioned be such, that the omission or negligent performance thereof would be likely to endanger the safety of any person travelling or being upon such railway, such officer or servant shall, on conviction before a magistrate, be liable to imprisonment, with or without hard labor, for a term not exceeding one year, or to fine, or both. Act XVIII. 1854, sect. 27.

Penalty for an act not wilful.

3337. If any person shall rashly or negligently, and without lawful excuse, do any act which shall be likely to endanger the safety of any person travelling or being upon such railway, he shall, upon conviction before a magistrate, be liable to imprisonment, with or without hard labor, for a term not exceeding one year, or to a fine, or to both. Act XVIII. 1854, sect. 28.

Rule of construction of this Act.

3338. In the construction of this Act, every officer and servant of such railway company shall be deemed to be legally bound to do every thing necessary for, or conducive to, the safety of the public, which he shall be required to do by any regulation which shall be made by the company, and allowed by the governor general of India in council, and of which regulation such officer or servant shall have notice; and every such officer and servant shall be deemed to be legally prohibited from doing every act which shall be likely to cause danger, and which by any such regulation he shall be prohibited from doing; and every person employed by or on behalf of such railway company to do any act

upon the railway shall be deemed to be a servant of the company. Act XVIII. 1854, sect. 29.

Jurisdiction of magistrate, &c. to fine.

3339. Any person, whether a European British subject or not, who shall be guilty of any offence, for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any justice of the peace for any of the presidency towns of Calcutta, Madras, and Bombay, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not, and any person hereby made punishable by a justice of the peace, shall be punishable upon summary conviction. Act XVIII. 1854, sect. 30.

Conviction to be quashed on merits only; form of conviction, &c.

3340. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such deposition. Act XVIII. 1854, sect. 31.

Magistrate may refer case to his assistant or deputy.

3341. A magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only to any of his assistants, or to any deputy magistrate lawfully appointed to exercise the powers of a covenanted assistant, and in such case every such assistant, or deputy magistrate, may exercise all the powers vested in a magistrate, subject to all the rules applicable to criminal cases deputed to such assistant or deputy magistrate acting judicially. Act XVIII. 1854, sect. 32.

Local government may authorize assistant to take up cases without reference.

3342. The local government may give general authority to any such assistant or deputy magistrate to exercise, without reference by a magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a magistrate, subject to appeal to the magistrate from any conviction by such assistant or deputy magistrate, within one month from the date of conviction. Provided that a magistrate may at any time call from any of his assistants, or from any deputy magistrate subordinate to him, any case pending before such assistant or deputy magistrate. Act XVIII. 1854, sect. 33.

Proviso.

Fines how to be recovered.

3343. All fines imposed under the authority of this Act for offences punishable by fine only by any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, or by any assistant to a magistrate, or deputy magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the abovenamed officers; and in case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless the offender shall give security to the satisfaction of such officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take such security by way of recognizance or otherwise;

and, if upon the return of such warrant it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer by the confession of the offender or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer may, by warrant under his hand, commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such officer, for any term not exceeding two calendar months when the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four calendar months when the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case, the commitment to be determinable in each of the cases aforesaid on payment of the amount. Act XVIII. 1854, sect. 34.

Enforcing payment of fare by passenger not producing ticket.

3344. Payment of any fare to which any passenger not producing or delivering up his ticket shall be liable under section I of this Act, may be enforced in the same manner as any fine imposed by this Act. Act XVIII. 1854, sect. 36.

Apprehension of offenders.

3345. Every person who shall be guilty of any offence mentioned in sections 25, 26, 27, and 28, of this Act, may be lawfully apprehended without any warrant or written authority, by any servant or officer of the company, or by any other person whom such officer or servant shall call to his aid, or by any police officer of such grade, as shall by any law in force for the time being be entrusted in any case with the power of arrest without a warrant; and every person so apprehended shall, with all convenient despatch, be carried and conveyed before a magistrate or justice of the peace, or other officer lawfully authorized to punish the offender or to commit him for trial. Act XVIII. 1854, sect. 37.

Construction.

3346. In the construction of this Act, unless where a contrary intention appears from the context, the word "magistrate" shall include a joint magistrate, and any person lawfully exercising the powers of a magistrate; words in the singular number shall include the plural; words in the plural shall include the singular; and words in the masculine gender shall include the feminine; and the word "fine" shall include a sum of money due upon a forfeited recognizance. Act XVIII. 1854, sect. 38.

All Indian railways to be within the Act.

3347. Every railway within the said territories, used for the public conveyance of passengers or goods, shall, until the contrary be proved, be presumed to be a railway within the meaning of this Act, and every company to whom any such railway shall belong, shall, until the contrary be proved, be presumed to be a railway company within the meaning of this Act. Act XVIII. 1854, sect. 40.

Penalty for omitting to report accident.

3348. Every such railway company shall, within forty-eight hours after the occurrence upon the railway belonging to such company of any accident attended with serious personal injury, give notice thereof to the local government; and if any such company omit to give such notice, they shall forfeit the sum of fifty rupees for every day during which the omission to give the same shall continue. Act XVIII. 1854, sect. 41.

Local government may require a return of acci-

3349. The local government may order and direct any such railway company to make up and deliver to them a return of serious accidents occurring in the course of the public

traffic upon the railway belonging to such company, whether attended with personal injury or not, in such form and manner as the government shall deem necessary and require for their information, with a view to the public safety; and if any such returns shall not be so delivered within fourteen days after the same shall have been required, every such company shall forfeit the sum of fifty rupees for every day during which the said company shall neglect to deliver the same. Act XVIII. 1854, sect. 42.

Penalty.

CHAPTER V.

OF OFFENCES AGAINST THE LAWS RELATING TO ELECTRIC TELEGRAPHS.

The E. I. Company to have the exclusive privilege of establishing electric telegraphs.

3350. Within the territories in the possession and under the government of the East India Company, the said East India Company shall have the exclusive privilege of establishing lines of electric telegraph. Provided that the governor general of India in council may grant a license to any person or company to establish a line of electric telegraph within any part of such territories, which license shall be revocable on the breach of any of the conditions therein contained. Act XXXIV. 1854, sect. 1.

Proviso.

Penalties for establishing or maintaining unauthorized electric telegraphs.

3351. Whoever shall, otherwise than under a license duly granted as aforesaid, establish, or after revocation of such license maintain, a line of electric telegraph within the said territories, shall be liable to a fine not exceeding one thousand rupees, and for every week during which such line shall be maintained shall be liable to a further fine not exceeding five hundred rupees. Act XXXIV. 1854, sect. 2.

Penalty for using or working such telegraphs.

3352. Whoever shall use a line of electric telegraph, knowing or having reason to believe that it is an unlicensed line, for the purpose of sending or receiving messages, or shall perform any service incidental thereto, shall, for every such offence, be liable to a fine not exceeding fifty rupees. Act XXXIV. 1854, sect. 3.

Government may take possession of telegraphs established by license.

3353. The governor general of India in council may, on the occurrence of any public emergency, take temporary possession of any line of electric telegraph established under license within the said territories. Act XXXIV. 1854, sect. 4.

Government may establish telegraph on land of railway company.

3354. Any railway company, on being required so to do by the governor general of India in council, shall permit the government to establish upon the land of such company adjoining the line of railway a line of electric telegraph, and shall give every reasonable facility for establishing and using the same. Act XXXIV. 1854, sect. 5.

Governor general in council to frame rules for the conduct of government telegraphs.

3355. The governor general of India in council may from time to time frame rules for the conduct of electric telegraphs established by government not inconsistent with this Act, and therein prescribe the regulations, conditions, and restrictions according to which all messages and signals shall be transmitted. Act XXXIV. 1854, sect. 6.

Government not responsible for loss or damage.

3356. The government shall not be responsible for any loss or damage which may occur in consequence of any person employed by the government in the electric telegraph department failing to transmit with accuracy any message entrusted to him for transmission; and no such person shall be responsible for any such loss or damage, unless he shall cause the same negligently, maliciously, or fraudulently. Act XXXIV. 1854, sect. 7.

No person to intrude into a telegraph office.

3357. Whoever shall without permission enter into a government telegraph office, or shall refuse to quit the same on being requested to do so by any officer or servant employed therein, or shall wilfully obstruct or impede any such officer or servant in the performance of his duty, shall be liable to a fine not exceeding one hundred rupees. Act XXXIV. 1854, sect. 8.

Penalties for cutting the line.

3358. Whoever shall wilfully cause or attempt to cause any interruption to the transmission of signals along a line of electric telegraph established by the government, by cutting or injuring the wire, or by injuring any portion of the line, or any instrument or apparatus, or by any other means, shall be liable to be imprisoned, with or without hard labor, for a term not exceeding two years, or to fine, or to both. Act XXXIV. 1854, sect. 9.

Injuring post, &c.

3359. Whoever shall wilfully or negligently damage or injure any post or any portion of the line of such electric telegraph, shall be liable to a fine not exceeding fifty rupees. Act XXXIV. 1854, sect. 10.

Penalties for fraudulently omitting messages or for disclosing secret messages.

3360. Whoever, being in the employ of the government in the electric telegraph department, shall fraudulently or maliciously secrete, make away with, alter, or omit to transmit any message which he may have received for transmission, or shall fraudulently or maliciously disclose any message so received by him and directed to be kept secret, shall be liable to be imprisoned, with or without hard labor, for a term not exceeding two years, or to fine, or to both. Act XXXIV. 1854, sect. 11.

Penalty for misconduct.

3361. Whoever being in such employ shall be guilty of any act of drunkenness, carelessness, or other misconduct, whereby the transmission or delivery of any message shall be endangered, or who shall loiter or make delay in the transmission or delivery of any message, shall be liable to a fine not exceeding one hundred rupees. Act XXXIV. 1854, sect. 12.

Penalty for sending messages without payment to government.

3362. Whoever being in such employ shall transmit by the electric telegraph any message upon which the prescribed charge has not been paid, intending thereby to defraud the government, shall be liable to be imprisoned, with or without hard labor, for a term not exceeding two years, or to fine, or to both. Act XXXIV. 1854, sect. 13.

Penalties for transmission of fabricated messages.

3363. Whoever shall fraudulently or maliciously transmit or cause to be transmitted by an electric telegraph established by government a message which he knows to be false or fabricated, shall be liable to be imprisoned, with or without hard labor, for a term not exceeding two years, or to fine, or both. Act XXXIV. 1854, sect. 14.

Jurisdiction.

3364. Any person not being a European British subject, who shall, beyond the local limits of the jurisdiction of her majesty's supreme court of judicature, commit any of

the offences mentioned in sections 9, 11, 13, and 14 of this Act, shall be punishable upon conviction by magistrate within whose jurisdiction the offence shall be committed. Act XXXIV. 1854, sect. 15.

Fines how to be recovered.

3365. Any person, whether a European British subject or not, who shall be guilty of any offence for which, according to the provisions of this Act, he shall be liable to a fine only, shall be punishable for such offence by any justice of the peace for any of the presidency towns of Calcutta, Madras, and Bombay, or for any of the settlements of Prince of Wales' Island, Singapore, and Malacca, magistrate, joint magistrate, or person lawfully exercising the powers of magistrate, within whose jurisdiction the offence shall be committed; and any person hereby made punishable by a justice of the peace shall be punishable upon summary conviction. Act XXXIV. 1854, sect. 16.

Conviction to be quashed on merits only; form of conviction, &c.

3366. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds: but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and, if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. Act XXXIV. 1854, sect. 17.

Magistrate may refer charge to his assistants.

3367. A magistrate may refer for trial and decision any charge of an offence hereby made punishable by fine only, to any of his assistants, or to any deputy magistrate lawfully appointed to exercise the powers of a covenanted assistant; and in such case every such assistant or deputy magistrate may exercise all the powers vested in a magistrate, subject to all the rules applicable to criminal cases deputed to such assistants or deputy magistrates acting judicially. Act XXXIV. 1854, sect. 18.

Government may authorize assistant and deputy magistrates to exercise certain powers.

3368. The local government may give general authority to any such assistant or deputy magistrate to exercise, without reference by a magistrate, any of the powers which they are hereby rendered competent to exercise upon reference by a magistrate, subject to appeal to the magistrate from any conviction by such assistant, or deputy magistrate, within one month from the date of the conviction. Provided that a magistrate may at any time call from any of his assistants, or from any deputy magistrate subordinate to him, any case pending before such assistant or deputy magistrate. Act XXXIV. 1854, sect. 19.

Fines how to be levied.

3369. All fines imposed under the authority of this Act, for offences punishable by fine only, by any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, or by any assistant to a magistrate, or deputy magistrate, may, in case of non-payment thereof, be levied by distress and sale of the goods and chattels of the offender, by warrant under the hand of any of the above-named officers; and in case any such fine shall not be forthwith paid, any such officer may order the offender to be apprehended and detained in safe custody until the return can be conveniently made to such warrant of distress, unless such party shall give security to the satisfaction of such

officer for his appearance at such place and time as shall be appointed for the return of the warrant of distress, and such officer may take such security by way of recognizance or otherwise; and if, upon the return of such warrant, it shall appear that no sufficient distress can be had whereon to levy such fine, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such officer, by the confession of the party or otherwise, that he has not sufficient goods and chattels whereupon such fine or sum of money could be levied if a warrant of distress were issued, any such officer by warrant under his hand may commit the offender to prison, there to be imprisoned only, or to be imprisoned and kept to hard labor, according to the discretion of such officer, for any term not exceeding two calendar months where the amount of the fine shall not exceed fifty rupees, and for any term not exceeding four calendar months where the amount shall not exceed one hundred rupees, and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount. Act XXXIV. 1854, sect. 20.

Imprisonment, if no sufficient distress, &c.

Authority to punish servants of the East India Company who commit offences against this Act in a foreign territory.

3370. If any servant of the East India Company, employed in the electric telegraph department within the dominions of any foreign prince or state in alliance with the said Company, in which an electric telegraph is established by the said Company, shall, within the dominions of such prince or state, commit any act hereby prohibited, or omit to do any act hereby required to be done by any person similarly employed within the territories under the government of the said Company, such servant of the said Company shall be guilty of an offence, and on conviction thereof shall be punished in the same manner as if such act had been done or omitted within the said last mentioned territories; and every such person may be tried, convicted, and punished either by fine or otherwise, according to the nature of the offence, by any court or officer duly empowered by the governor general of in India in council to take cognizance of offences committed in such dominions by servants of the East India Company, or by any court or magistrate or other competent officer in any part of the territories within the government of the East India Company, in the same manner as if the offence had been committed in such part of the said territories. Act XXXIV. 1854, sect. 21.

Explanation of terms.

3371. The word "magistrate" in this Act shall include joint magistrates and persons lawfully exercising the powers of magistrates; and the word "fine" shall include a penalty or forfeiture. Act XXXIV. 1854, sect. 22.

Government to frame rules for telegraphs established by license.

3372. It shall be lawful for the governor general in council to frame rules for the conduct of any electric telegraph established by license under this Act and to declare from time to time what portions of this Act shall be applicable to such telegraph and to persons using the same or employed in connection therewith. Act XXXIV. 1854, sect. 23.

CHAPTER VI.

OF OFFENCES AGAINST THE ABKAREE REVENUE LAWS.

English distilleries not to be constructed or worked without license.

3373. It shall not be lawful for any person to construct or work a distillery after the manner in which distilleries are constructed and worked in England, without a license under the signature of the collector of the district in which such distillery is situated; or, in case the distillery is within twenty miles of Calcutta, or such other distance less than twenty miles as may from time to time be prescribed by the lieutenant-governor of Bengal, under the signature of the collector of Calcutta. Act XXI. 1856, sect. 5.

Board of revenue to prescribe rules for regulating English distilleries.

3374. The board of revenue, with the sanction of government, may prescribe such rules relative to the granting of licenses under the preceding section, to the notices to be given by the proprietor of a licensed distillery when he commences and discontinues work, to the size and description of the stills, to the passing and storing of the spirits, to the inspection and examination of the distillery and warehouses and of the spirits manufactured and stored therein, and to the furnishing of statements and lists of such spirits, and of the stills, coppers, casks, and other utensils used in the distillery, as may from time to time be judged expedient. Act XXI. 1856, sect. 6.

Rate of duty to be levied on spirits.

3375. A duty shall be levied on spirits manufactured at distilleries worked according to the English method at the rate of one rupee the imperial gallon of the strength of London-proof, to be augmented or reduced in proportion to the strength of the spirit. No spirits shall be removed from any such distillery, or the warehouses connected therewith, upon which the aforesaid duty has not been paid, or for the duty chargeable on which a bond has not been executed as hereinafter provided; and for all spirits removed upon payment of duty or under bond passes shall be issued by the collector, which shall specify the quantity and strength of the spirit, the place of its destination, the person to whom it is consigned, and whether the duty has been paid or secured by bond. Act XXI. 1856, sect. 7.

Spirits may be removed for exportation under bond.

3376. Spirits may be removed from any licensed distillery for exportation as aforesaid without payment of duty, under such rules and restrictions as may be from time to time prescribed by the board of revenue, on the person removing them executing a bond, with one or more sureties, to the East India Company, in prescribed form, for the payment of the prescribed duty upon such portion of the said spirits as may not be exported within four months from the date of the bond. Provided, however, that it shall be lawful for the collector, with the sanction of the commissioner, on sufficient cause shown, to extend the period allowed for the exportation of the spirits for a further term of four months. Act XXI. 1856, sect. 9.

To be taken direct to custom house.

3377. Spirits under bond shall be taken from the distillery direct to the custom house, under passes to be granted for that purpose by the collector. Act XXI. 1856, sect. 10.

Spirits intended for exportation may be removed for local consumption.

3378. Spirits brought to the custom house under bond for exportation may nevertheless be removed for local consumption, under passes to be granted for that purpose by the collector of revenue, upon payment of the prescribed duty on the quantity so removed; and credit for such payment shall be given on the settlement of the bond. Act XXI. 1856, sect. 12.

Spirits shipped for exportation not to be relanded.

3379. Spirits shipped for exportation shall not be re-landed without a special pass from the collector of revenue in addition to the usual order of the collector of customs. Act XXI. 1856, sect. 14.

Rum shrub, &c., how to be charged with duty;—may be exported under the same rules as spirits.

3380. Rum shrub, cordials, and other liquors, prepared in a licensed distillery under the supervision of the surveyor or officer in charge of the distillery, shall be charged with duty according to the quantity of spirit used in the preparation; and all the provisions contained in this Act respecting spirits manufactured after the English method, except such as relate to gauge and proof, shall be applicable to such liquors. Act XXI. 1856, sect. 16.

Penalty for constructing or working a distillery or collecting materials without license.

3381. Every person who shall construct or work a distillery after the English method, without a license from the collector, shall forfeit for every such offence a sum not exceeding one thousand rupees; and all spirits manufactured at any such distillery, and all materials and implements collected for the purpose of such manufacture, shall be liable to confiscation. Act XXI. 1856, sect. 18.

Penalty for non-observance of rules prescribed by board of revenue.

3382. Every proprietor or manager of a licensed distillery constructed and worked after the English method, who shall omit to furnish any notice or any statement or list required by the rules prescribed by the board of revenue under section 6 of this Act, or shall wilfully do any thing in contravention of the said rules, shall forfeit for every such offence a sum not exceeding two hundred rupees; and, if any such offence be committed a second time with respect to the same distillery, the license granted for the working of such distillery may be withdrawn by the collector. Act XXI. 1856, sect. 19.

Penalty for removing spirituous liquors without payment of duty.

3383. Every person who shall remove, or attempt to remove, from any licensed distillery constructed and worked after the English method, any spirituous liquors upon which the duty has not been paid, or for the duty on which a bond has not been executed, or any spirituous liquors for which a pass has not been issued by the collector, shall forfeit for every such offence a sum not exceeding one thousand rupees; and the liquors, together with the vessels containing the same and the animals and conveyances used in carrying them, shall be liable to confiscation. If it shall appear to the collector that the offence was committed with the consent or knowledge of the proprietor or manager, the license granted for the construction and working of the distillery from which such liquors have been removed or attempted to be removed may be withdrawn. Act XXI. 1856, sect. 20.

Penalty for irregular re-land of spirituous liquors.

3384. Every person who shall re-land, or attempt to re-land, any spirituous liquors shipped for exportation, without a special pass from the collector of revenue at the place of exportation, shall forfeit for every such offence a sum not exceeding five hundred rupees; and the liquors, together with the casks and vessels containing the same, and the carts, boats, and animals employed in carrying them, shall be liable to confiscation. Act XXI. 1856, sect. 21.

Spirits from foreign territory subject to duty.

3385. Spirituous liquors manufactured at the foreign settlement of Chandernagore, or at any other place in India beyond the limits of the Company's territories, shall, on passing the limits of the Company's territories subject to this Act, be charged with the duty prescribed for proof spirits in section 7 of this Act: and any person who may be found in possession of any such liquors, without a pass from the collector certifying the payment of such duty, shall forfeit for every such offence a sum not exceeding two hundred rupees; and the liquors, together with the vessels containing the same, and the animals and conveyances used in carrying them, shall be liable to confiscation. Act XXI. 1856, sect. 22.

Construction or working of breweries and manufacture of malt liquor, without license, prohibited.

3386. It shall not be lawful for any person to construct or work a brewery, or to manufacture any description of malt liquor, without a license from the collector of the district. The board of revenue, with the sanction of government, may prescribe such rules relative to the granting of licenses for constructing and working breweries as may from time to time be judged expedient. Act XXI. 1856, sect. 23.

Penalty.

3387. Every person who shall construct or work a brewery, or manufacture malt liquor, without a license, shall forfeit for every such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 24.

Spirituous and fermented liquors not to be sold without license.

3388. Spirituous liquors passed from distilleries worked according to the English method, fermented liquors manufactured at a licensed brewery, and spirituous and fermented liquors imported either by land or by sea, shall not be sold except under license from the collector. Act XXI. 1856, sect 25.

Fee for wholesale license.

3389. Persons taking out licenses for the wholesale vend of spirituous and fermented liquors as aforesaid shall pay, for every such license, the sum of sixteen rupees. The license shall be current only during the official year, and in the district in which it is granted. But travelling merchants may obtain a general license, authorizing them to sell by wholesale, in any district which they may visit in the course of their travel, without taking out a fresh license for that district, under such rules and restrictions as may be from time to time prescribed by the board of revenue. Act XXI. 1856, sect. 26.

Fee for retail license.

3390. Persons taking out licenses for the retail sale of spirituous and fermented liquors as aforesaid shall pay for every such license such fee or tax as may be fixed by the board of revenue; and such fee or tax shall be payable at such periods as the said board may direct. Provided that such fee or tax shall be at such rate for each license as shall not exceed the total sum of one hundred rupees for the whole year. Any sale of spirituous or fermented liquors as aforesaid, in less quantity than two imperial gallons or one dozen of quart bottles, shall be held to be a retail sale. Act XXI. 1856, sect. 27.

What to be held a retail sale.

Country spirits, liquors, and drugs not to be sold without license.

3391. It shall not be lawful for any person to manufacture spirits after the native process, nor to sell such spirits, or taree, or puchwye, or ganjah, bhang, churrus, opium, or any preparation or admixture of the same, except under license from the collector. Act XXI. 1856, sect. 28.

Taree to be held to be a fermented liquor.

3392. All the provisions relating to the sale or possession of fermented liquors contained in the following sections of this Act, shall be held applicable to the sale or possession

of taree, whether in a fermented state or otherwise; and all taree, both fresh and fermented, shall be held to be included in the expression "fermented liquors" as used in the following sections of this Act. Act XXI. 1856, sect. 29.

Proviso.

3393. Provided, however, that it shall be lawful for government, on the report of the the board of revenue, to pass an order suspending the operation of all the provisions relating to taree, contained in this Act, with respect to any district in which the consumption of taree in a fermented state is inconsiderable; and, after the passing of any such order, it shall be lawful for taree to be possessed and sold without license in any such district, notwithstanding any thing contained in this Act. Act XXI. 1856, sect. 30.

Collectors may establish distilleries for country spirits.

3394. The collector, with the sanction of the board of revenue, may establish, at any place within his jurisdiction, a distillery in which spirits may be manufactured after the native process; and may from time to time fix limits within which no country spirits, except such as are manufactured at the said distillery, shall be introduced or sold without a special pass from the collector, and within which no stills shall be constructed or worked, or spirits manufactured, except at the said distillery. He may also, with the like sanction, discontinue any distillery so established, whenever its discontinuance may appear to be expedient. Act XXI. 1856, sect. 31.

Board may prescribe rules for distilleries;

3395. The board of revenue may prescribe such rules relative to the management of distilleries established under the last preceding section, to the conditions on which spirits may be manufactured in the said distilleries, and to the passes to be issued for the conveyance of such spirits to the shops of the vendors, as may from time to time be judged expedient. Act XXI. 1856, sect. 32.

and regulate the mode of supplying taree and intoxicating drugs to the licensed vendors thereof.

3396. The board of revenue may regulate the mode in which taree shall be supplied to licensed vendors of the same; and may frame rules for the grant of licenses or passes to persons purchasing, transporting, or storing ganjah, bhang, or churrus for the supply of the licensed vendors of those drugs. They may also place the cultivation, preparation, and store of the intoxicating drugs above-mentioned under such supervision as may be deemed necessary to secure the duty leviable thereon. Act XXI. 1856, sect. 33.

Sale of more than specified quantities of country spirits, &c. prohibited.

3397. Except for the supply of licensed vendors, country spirits, taree, and puchwye, and intoxicating drugs, shall not be sold in larger quantities than are hereunder specified—namely, country spirits, one seer; taree or puchwye, four seers; ganjah or bhang, or any preparation or admixture of the same, one quarter of a seer; churrus or opium, or any preparation or admixture of the same, five tolahs weight: and the sale of any such quantity as is herein allowed shall be deemed to be a retail sale within the meaning of this Act. Act XXI. 1856, sect. 35.

Licensed retail vendors of country spirits to furnish security.

3398. Every person taking out a license for the manufacture of county spirits, or for the retail sale of spirituous or fermented liquors, or intoxicating drugs, shall execute a counterpart engagement in conformity with the tenor of the license, and shall give such security for the performance of his engagement or make such deposit in lieu of security, as the collector may require. Act XXI. 1856, sect. 37.

Board to regulate form of license.

3399. The board of revenue shall have authority to regulate the form and conditions of all licenses granted under this Act. Act XXI. 1856, sect. 39.

Penalty for refusing to produce license on demand of abkaree officer, or for breach of license.

3400. Every person licensed to manufacture country spirits, or to sell spirituous or fermented liquors or intoxicating drugs, who shall not produce his license on the demand of any abkaree officer, or who shall commit any act in breach of any of the conditions of his license not otherwise provided for in this Act, shall forfeit for every such offence a sum not exceeding fifty rupees. Act XXI. 1856, sect. 43.

Penalty for sale in contravention of license.

3401. Every licensed retail vendor, who shall sell any larger quantity of spirituous or fermented liquors, or intoxicating drugs, than is allowed to be sold by retail by the provisions of this Act, and every licensed wholesale vendor who shall make a retail sale, shall forfeit for every such offence a sum not exceeding two hundred rupees. Provided always, that nothing in this section shall be held to prohibit the grant to the same person of both wholesale and retail licenses, subject to the provisions of this Act. Act XXI. 1856, sect. 44.

Proviso.

Penalty for permitting drunkenness, &c., in shop.

3402. Every person licensed to sell spirituous or fermented liquors, or intoxicating drugs, who shall permit drunkenness, riot, or gaming in his shop, or shall permit persons of notoriously bad character to meet or remain therein, or shall receive any wearing apparel or other effects in barter for liquors or drugs, shall forfeit for every such offence a sum not exceeding 200 rupees. Act XXI. 1856, sect. 45.

Licensed vendors not to harbour robbers, &c., nor to keep their shops open between sunset and sunrise; nor to harbour persons at night.

3403. The licensed vendors of spirits and drugs are bound, by the conditions of their licenses, not to harbour robbers, thieves, or riotous persons, nor to receive any goods or wearing apparel in barter for liquors or drugs; they are also bound not to open their shops before sun-rise, nor to keep them open after sun-set; and are enjoined not to harbour any person in their shops during the night, but to give information to the nearest magistrate or police officer of any suspected persons who resort to their shops. Reg. XX. 1817, sect. 28, cl. 4.

Police officers to report any breach of the above rules.

3404. The daregahs of police are enjoined to report to the magistrate any breach of the foregoing conditions which come to their knowledge. They are also to proceed against any licensed vendor of spirits or drugs, who is charged with a criminal offence cognizable by them, according to the general rules in force, which are applicable to the charge. Reg. XX. 1817, sect. 28, cl. 5.

Penalty for conveying country spirits from distillery without pass, &c.

3405. Every person who shall convey or attempt to convey any country spirits from a distillery established under section 31 of this Act without a pass, or exceeding the quantity for which a pass shall have been granted, or shall introduce or attempt to introduce any country spirits manufactured at another place into the limits fixed for the consumption of spirits manufactured at such distillery, without a special pass from the collector, shall forfeit for every such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 46.

Penalty for contravention of rules prescribed by the board of revenue.

3406. Every person who shall wilfully contravene any rule prescribed by the board of revenue for the management of a distillery established as aforesaid, otherwise than as

provided for in the last preceding section, shall forefeit for every such offence a sum not exceeding fifty rupees. Act XXI. 1856, sect. 47.

Penalty for illicit manufacture or sale of country spirits, &c.

3407. Every person other than a licensed manufacturer, who shall manufacture any country spirits; and every person other than a licensed vendor, or a person duly authorized to supply licensed vendors, who shall sell any spirituous or fermented liquors, or intoxicating drugs; and every person authorized to supply licensed vendors, who shall sell such any liquors or drugs to any person other than a licensed vendor; shall forfeit for every such offence a sum not exceeding five hundred rupees. Provided always, that nothing in this section, or in section 25, shall apply to the sale by auction of any spirituous liquors, wines, or beer, purchased by any person for his private use and so disposed of upon such person quitting a station or after his decease. Act XXI. 1856, sect. 48.

Proviso.

Penalty for illegal possession of country spirits, &c.

3408. Every person, other than a licensed manufacturer or vendor, or a person duly authorized to supply licensed vendors, who shall have in his possession any larger quantity of country spirits, or taree, or puchwye, or intoxicating drugs, except opium, than may legally be sold by retail under the provisions of section 35 of this Act, or shall transport by land or by water, or have in his possession, any spirituous liquors made at a distillery worked according to the English method, or any imported spirituous or fermented liquors, in larger quantity than two gallons, without a pass from the collector or other officer duly empowered in that behalf, shall forfeit for every such offence a sum not exceeding two hundred rupees; and the liquors and drugs, together with the vessels, packages, and coverings in which they are found, and the animals and conveyances used in carrying them, shall be liable to confiscation. Provided always, that nothing in this section shall extend to any spirituous liquors, wines, or beer, purchased by any person for his private use and not for sale. Act XXI. 1856, sect. 49.

Proviso.

Provisions of the two last preceding sections not to apply to the sale and possession of taree when supplied to sugar manufactories, nor to the sale and possession of ganjah and bhang by cultivators.

3409. The provisions of the two last preceding sections, so far as they relate to the sale and possession of fermented liquors, shall not be held applicable to the sale and possession of taree, the produce of the date tree, when supplied or used for the manufacture of goor or molasses; and the provisions of the said sections, relating to the sale and possession of intoxicating drugs, shall not be held applicable to the sale and possession of ganjah or bhang by the cultivators of the plants which produce those drugs respectively. But such cultivators are prohibited from selling any ganjah or bhang to any one other than a licensed vendor, or a person duly authorized to purchase by pass or license from the collector; and every such cultivator who shall act in breach of this prohibition, shall forfeit for every such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 50.

Cultivators of ganjah or bhang to sell only to licensed persons.

Penalty for having in possession a greater quantity of opium than five tolahs weight.

3410. Every person, other than a licensed vendor, who shall have in his possession a greater quantity of opium than five tolahs weight, shall forfeit for every such offence a sum not exceeding five hundred rupees, unless the opium found in the possession of such person shall exceed the weight of thirty-one seers and a quarter, in which case the penalty may be increased at a rate not exceeding sixteen rupees the seer for all the opium so found in excess of that weight; and the opium, together with the vessels, packages, and coverings in which

it is found, and the animals and conveyances used in carrying it, shall be liable to confiscation. Act XXI. 1856, sect. 51.

Exception in favor of—

opium cultivators;

travellers;

and horse dealers.

Penalty for possession of excessive quantity of opium by travellers, &c.

*3411. Provided always, that nothing in the last preceding section shall extend to the persons and circumstances hereinafter specified, namely:—1. Authorized opium cultivators having newly extracted opium in their possession during the usual period between the full growth of the poppy, and the delivery of the produce to the opium agent. 2. Travellers and visitants from foreign states or countries having in their possession any quantity of foreign opium not exceeding two seers, the produce of such states and countries, and intended for the private use of such travellers and visitants, or their attendants, and not for sale or traffic. 3. Dealers in horses travelling with strings of horses from beyond the South-West frontier of the territory under the government of the lieutenant-governor of the North-Western Provinces, and having in their possession opium, the produce of foreign states or countries, not exceeding in quantity the proportion of ten tolahs weight for each horse. If opium be found in the possession of any traveller or visitant, or any dealer in horses as aforesaid, in excess of the quantities above specified, such excess shall be liable to confiscation, but the persons in whose possession it may be found shall not be subject to any further penalty. Act XXI. 1856, sect. 52.

Penalties for sale of adulterated opium, &c., by licensed vendors.

3412. Every licensed vendor, who shall sell or offer for sale opium adulterated with any foreign substance, not being a preparation or admixture of opium for the sale of which such vendor may have taken out a license; or, except in districts exempted fron the operation of section 64, shall sell or have in his possession any opium other than the opium supplied to him from the government stores; shall forfeit for every such offence a sum not exceeding five hundred rupees, and the license held by him shall be withdrawn, and the opium, together with the vessels or packages in which it is found, shall be seized, and confiscated. Act XXI. 1856, sect. 53.

Penalty for conniving at the illicit manufacture or sale of spirits, &c.

3413. Every proprietor, farmer, tuhseeldar, gomashtah, or other manager of land, who shall authorize or connive at the manufacture of country spirits or the sale of spirituous or fermented liquors or intoxicating drugs by any unlicensed person, shall forfeit for every such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 54.

Power of abkaree officers to inspect shops;

3414. Any abkaree officer may enter and inspect at any time by day or by night the shop or premises in which any licensed manufacturer or retail vendor shall carry on the manufacture of country spirits, or the sale of spirituous or fermented liquors, or intoxicating drugs. Act XXI. 1856, sect. 55.

and to arrest persons carrying spirits, &c, liable to confiscation;

3415. Any abkaree officer may stop and detain any person carrying any spirituous or fermented liquors or intoxicating drugs liable to confiscation under this Act; and may seize the liquors or drugs with the vessels, packages, or coverings in which they are contained, and the animals and conveyances used in carrying them; and may also arrest the person in whose possession such liquors or drugs are found. Act XXI. 1856, sect. 56.

and to arrest unlicensed distillers, &c

3416. Any abkaree officer above the rank of jemadar of peons may arrest any person having in his possession an unlicensed still, or any spirituous or fermented liquors, or in-

toxicating drugs, liable to confiscation under this Act, or engaged in the unlawful sale of spirituous or fermented liquors, or intoxicating drugs, and may seize such still with the materials for working it, and all such liquors and drugs. Act XXI. 1856, sect. 57.

Power of abkaree officers to search on information of illicit manufacture or possession.

3417. Whenever any abkaree officer above the rank of a jemadar of peons, shall have good reason to believe, from information given by any person, which information shall be taken down in writing, that spirits are unlawfully manufactured, or that any spirituous or fermented liquors, or intoxicating drugs liable to confiscation under this Act, are kept or concealed in any house, boat, or other place, such officer may, between sunrise and sunset, but always in the presence of a darogah or other officer of police not being under the grade of a jemadar, enter into any such house, boat, or place, and in case of resistance may break open any door, and force and remove any other obstacle to such entry; and may seize and carry away all stills and materials used in the manufacture of such spirits, and all such liquors and drugs; and may also arrest the occupier of the house, boat, or place with all other persons concerned in the manufacture of such spirits, or in the keeping and concealing of such liquors or drugs. Act XXI. 1856, sect. 58.

Officers of the police, customs, and revenue departments may be vested with same powers as abkaree officers.

3418. The powers of seizure, search, and arrest, given to abkaree officers by the three last preceding sections, shall, in regard to the seizure and search for contraband opium and the arrest of persons found in possesssion thereof, be vested also in the officers of the police, customs, and revenue departments according to their respective grades. And it shall further be lawful for the government to invest the officers of those departments, or of any of them, with the like powers with respect to the seizure of, and search for, spirituous and fermented liquors and intoxicating drugs of every description, and the arrest of persons found in possession of them; and all such officers when so empowered, as well as all police, customs, and revenue officers when acting under the authority conferred by this section for the suppression of illicit dealings in opium, shall be held and deemed to be abkaree officers within the meaning of this Act. Act XXI. 1856, sect. 59.

Abkaree officer to report every arrest, seizure, or search to his official superior, and to take the person arrested to the magistrate for trial, &c.

3419. Whenever an abkaree officer shall arrest any person, or seize any still, or any liquors or drugs liable to confiscation under this Act, or enter any house, boat, or place for the purpose of searching for any such illicit articles, he shall, within twenty-four hours thereafter, make a full report of all the particulars of such arrest, or seizure, or search, to his official superior, and unless acting under the warrant of the collector, shall carry the person arrested, or the illicit article seized, with all convenient despatch, to the magistrate for trial or adjudication. Act XXI. 1856, sect. 60.

Collector may issue warrant of arrest in certain cases.

3420. The collector may issue his warrant for the arrest of any person whom he may have reason to believe, either from information in writing, or from the proceedings in any other case, to be engaged in the unlawful sale of spirituous or fermented liquors or intoxicating drugs, or to have in his possession any such liquors or drugs liable to confiscation under this Act. Act XXI. 1856, sect. 61.

Collector may issue search-warrant.

3421. The collector may issue his warrant for the search of any house, boat, or other place, in which, upon any of the grounds mentioned in the last preceding section, he may have reason to believe that spirits are unlawfully manufactured, or that spirituous or fermented

liquors or intoxicating drugs, liable to confiscation under this Act, are kept or concealed; and such warrant may be executed by any officer above the rank of a jemadar of peons, in the manner prescribed in section 58 of this Act. Act XXI. 1856, sect. 62.

Procedure after arrest or seizure.

3422. Whenever any person is arrested, or any articles are seized under the warrant of a collector, the collector, after such enquiry as he thinks necessary, shall send the person arrested or the articles seized to the magistrate, or shall order the immediate discharge of such person or the release of such articles. Act XXI. 1856, sect. 63.

Penalty for obstructing abkaree officers.

3423. Every person who shall obstruct or resist any abkaree officer in the due execution of this Act, or of any rules prescribed under the authority thereof, shall forfeit for such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 64.

Police officers to support abkaree officers in search.

Warrants how to be executed.

Zenanas of respectable persons not to be entered.

3424. Darogahs of police are to support the officers of the abkaree mahal in the execution of search warrants, issued under the seal and signature of the collector, for the discovery of unlicensed stills, or of the produce of such stills. Such search warrants are to be executed only in the day time, that is, between sun-rise and sun-set; and, if possible, in the presence of two or more respectable inhabitants of the village in which the house or place proposed to be searched may be situated. In the execution of such warrants, the apartments of the women, in houses belonging to persons of respectability and credit, that is, of all those classes whose women do not ordinarily appear in public, are not to be entered by the collector's officers, or by the officers of the police. Reg. XX. 1817, sect. 28, cl. 2 and 3.

Police officers to assist abkaree officers.

Penalty.

3425. All police officers are required to aid the abkaree officers in the due execution of this Act, upon notice given or request made by such officers; and any police officer who, without lawful excuse, shall neglect or refuse to assist as aforesaid, and any darogah or other officer in charge of a police station, who, on application made by an abkaree officer under section 58 of this Act, shall fail to attend a search himself, or to depute a subordinate officer not being below the grade of a jemadar, shall forfeit for such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 65.

Abkaree officers are to be supported by regular police officers in distraining property of abkars, &c.

3426. Whenever an officer on a collector's establishment, duly authorized to distrain property on account of arrears of revenue, due from any manufacturer or vendor of spirituous liquors, taree, puchwye, or intoxicating drugs, including opium, is resisted in the enforcement of the collector's process, he is, on certifying such resistance on oath before a darogah of police, to receive the aid of the regular police officers of the thana in effecting the attachment; and the police officers are to be guided in their proceedings in regard to entering and searching houses for property, belonging to defaulters, by the rules prescribed in this regulation for their conduct in cases of distraint for arrears of land rent,* as far as the same are applicable. Reg. XX. 1817, sect. 28, cl. 1.

*v. *para.* 1686 *et seq.*

Penalty for maliciously giving false information.

3427. Every person who shall maliciously give false information against any person as being engaged in the unlawful manufacture of spirits, or as selling or having in his possession any spirituous or fermented liquors or intoxicating drugs in contravention of this Act, and so procure that such person be arrested, or that any house, boat, or other place be searched, to the injury or annoyance of such person, or any other person whatsoever, shall

forfeit for such offence a sum not exceeding five hundred rupees, which sum, or any portion thereof, may be paid to the person aggrieved, and shall be further liable to imprisonment for a period not exceeding six months. Act XXI. 1856, sect. 66.

Penalty for vexatious search or seizure.

3428. Any abkaree officer, who shall, without reasonable ground of suspicion, search or cause to be searched any house, boat, or other place, or shall vexatiously and unnecessarily seize the goods or chattels of any person, on the pretence of seizing or searching for any spirituous liquors or intoxicating drugs liable to confiscation under this Act, or shall vexatiously and unnecessarily arrest any person, or commit any other excess not required for the execution of his duty, shall forfeit for such offence a sum not exceeding five hundred rupees, which sum, or any portion thereof, may be paid to the person aggrieved. Act XXI. 1856, sect. 67.

Penalty on abkaree officers for delay in reporting arrest, &c., or in carrying person arrested to magistrate or collector.

3429. Any abkaree officer who shall neglect to report the particulars of an arrest, seizure, or search within twenty-four hours thereafter, or shall delay carrying to the magistrate or collector, as the case may be, any person arrested, or any illicit articles seized under this Act, shall forfeit for such offence a sum not exceeding two hundred rupees. Act XXI. 1856, sect. 68.

Penalty for conniving at escape of persons arrested, &c.

3430. Any abkaree officer who shall unlawfully release or connive at the escape of any person arrested under this Act, or connive at the manufacture of spirits or the sale of spirituous or fermented liquors or intoxicating drugs by any unlicensed person, or by any licensed person contrary to the terms of his license, or act in a manner inconsistent with his duty, for the purpose of enabling any person to do anything whereby any of the provisions of this Act may be evaded or broken, or the abkaree revenue defrauded; and any darogah of police or other officer invested with local jurisdiction, who shall authorize or connive at the establishment of any unlicensed shop for the sale of such liquors or drugs as aforesaid in any place subject to his control, shall forfeit for such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 69.

Penalty for asking or taking gratuities.

3431. Any abkaree officer who shall ask or take any unauthorized gratuity in consideration of doing or omitting to do any act in his official capacity, shall forfeit for such offence a sum not exceeding five hundred rupees. Act XXI. 1856, sect. 70.

Adjudication of penalties and seizures.

3432. All forfeitures and penalties prescribed for offences against the provisions of this Act, and all seizures of goods declared liable to confiscation under this Act, shall be adjudged by the magistrate on the information of the collector or any abkaree officer. Provided that no such information shall be necessary in any case of complaint preferred to a magistrate under any of the seven last preceding sections or under section 45. Act XXI. 1856, sect. 71.

Procedure in cases other than those of persons sent in custody by a collector or abkaree officer.

3433. In all cases in which a complaint or information is preferred to a magistrate of offences committed against this Act, not being cases in which persons are sent in custody by a collector or abkaree officer, the magistrate shall issue a summons requiring the attendance of the person accused. The rules contained in the regulations And acts in force, for the trial of cases before a magistrate, and for appeal against orders passed by a magistrate,

shall be applicable to trials under this Act. Provided that no complaint or information of an offence against this Act shall be admitted, unless it be preferred within the period of six months after the commission of the offence to which the complaint or information refers. Act XXI. 1856, sect. 72.

Punishment on second or subsequent conviction.

3434. Whenever any person shall be convicted of an offence against this Act, after having been previously convicted of a like offence, he shall be liable, in addition to the penalty attached to such offence, to imprisonment for a period not exceeding six months; and a like punishment of imprisonment not exceeding six months shall be incurred, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second. Act XXI. 1856, sect. 73.

Confinement in civil jail.

3435. Every person who shall be imprisoned under the last preceding section, or on account of the non-payment of any sum forfeited under this Act, if the offence of which he has been convicted be one with respect to which the information of the collector or an abkaree officer is required by section 71, shall be confined in the civil jail. Act XXI. 1856, sect. 74.

Disposal of confiscated goods.

3436. All goods and chattels adjudged to confiscation, except opium, shall be disposed of by the collector by public sale. Opium seized and confiscated shall be sent for examination to the civil surgeon of the station, and, if declared by him to be fit for use, shall be transmitted to the government factories, or otherwise disposed of in such manner as the board of revenue shall direct. If declared to be unfit for use, it shall be immediately destroyed. Act XXI. 1856, sect. 75.

Disposal of fines, &c., as rewards.

3437. One half of all fines and forfeitures levied from persons convicted of the unlawful manufacture of spirits, or of the unlawful sale or possession of spirituous or fermented liquors or intoxicating drugs; and one half of the proceeds from sale of all confiscated articles except opium, and, in the case of opium confiscated and declared by the civil surgeon to be fit for use, a reward of one rupee eight annas for each seer; shall, upon adjudication of the case, be awarded to the officer or officers who apprehended the offender; and the other half of such fines and forfeitures, and the other half of the proceeds of sale, or in the case of opium as aforesaid, a reward of one rupee eight annas for each seer, shall be given to the informer. If in any case the fine or forfeiture is not realized, the board of revenue may grant such reasonable reward, not exceeding the sum of two hundred rupees, as may seem to them fit; and the said board may direct by general order what classes of abkaree officers shall receive rewards, and what classes shall have no title to share therein. Act XXI. 1856, sect. 76.

Rewards where no fine is realized.

Fines undisposed of to belong to government.

Special rewards to informers.

3438. All fines and forfeitures levied under this Act, the disposal of which is not specially provided for, shall belong to government; but the board of revenue may appropriate any portion thereof, not exceeding one half, for rewarding informers, or for compensating persons subjected to annoyance or injury by any proceedings under this Act. Act XXI. 1856, sect. 77.

The farmer to make his own arrangements with

3439. When the duties leviable on any of the articles above enumerated [spirituous or fermented liquors, or intoxicating drugs, or any description of such liquors or drugs] are

the manufacturers and vendors within the limits of his farm.

let in farm, the farmer shall be at liberty to make his own arrangements with the manufacturers and vendors within the limits of his farm; and all the penalties and forfeitures prescribed by this Act for the unlawful manufacture, sale, or possession, of any such article shall be incurred by all persons manufacturing, selling, or possessing the same without license or authority from the farmer. Act XXI. 1856, sect. 81.

List of licenses granted by farmer to be filed.

3440. Provided always, that every such farmer shall be required to file in the collector's office a list of all the licenses granted by him in such form as may be prescribed by the board of revenue.

Restrictions with respect to grant of licenses.

Provided also, that it shall be lawful for the collector, with the sanction of the said board, before entering into engagements for any such farm, to make such reservations or restrictions with respect to the grant of licenses as may be deemed proper and expedient. Act XXI. 1856, sect. 82.

Lease may be cancelled or new restriction imposed.

3441. The collector may, with the sanction of the board of revenue, cancel any lease granted under this Act; or, within the period of the lease, impose any new restriction on the farmer. Act XXI. 1856, sect. 83.

Rules respecting the manufacture and sale of spirits, &c. in military cantonments.

3442. Within the limits of any military cantonment,(a) and within a circle drawn at a distance of two miles, or such other distance as may in any case be prescribed by government, from such limits, licenses for the manufacture of spirits and for the sale of spirituous and fermented liquors shall not be granted, nor shall the duties leviable upon such spirits and liquors be let in farm, otherwise than with the knowledge and consent of the commanding officer: and, upon the requisition of such officer, any license which may have been granted either by the collector or by a farmer, within such circle or limits, shall be immediately withdrawn. Act XXI. 1856, sect. 85.

Mode of making arrest or search within military cantonments.

3443. In all other respects, the foregoing provisions of this Act shall have full force and effect within such circle and limits as aforesaid. Provided, however, that, when arrest or search is to be made within the limits of any cantonment, the collector or other officer authorized under this Act to make arrest or search, shall, whenever it may be practicable, give previous notice to the commanding officer, and in all other cases shall report the arrest or search to such commanding officer with as little delay as possible. Provided also, that nothing herein contained shall affect or interfere with the provisions of Act XVIII. 1853.(a) Act XXI. 1856, sect. 86.

Powers vested in officers of the opium department.

3444. In the districts in which the poppy is cultivated on account of government, the deputy opium agents and sub-deputy agents shall exercise the powers vested by this Act in collectors, so far as the same relate to the suppression of illegal dealings in opium; and the officers of the opium department shall exercise the powers vested by this Act in abkaree officers for the seizure of illicit opium and the arrest of persons found in possession thereof, and, in respect to such seizures and arrests, shall be held and deemed to be abkaree officers within the meaning of this Act. Act XXI. 1856, sect. 87.

Construction of terms;

government,

3445. The following words and expressions in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction:—The word "government" shall mean the lieutenant governors of Bengal and

(a) For rules regarding the sale of spirits in cantonments, see paras. 295 *et seq.*

of the North-Western provinces. The expression "board of revenue" shall mean the board of revenue in Calcutta and the sudder board of revenue at Agra. The word "commissioner" shall mean the commissioner of a revenue division, or a commissioner of abkaree. The word "collector" shall include a deputy collector, or other revenue officer in independent charge of a district, and a superintendent of abkaree revenue. The word "magistrate" shall include a joint magistrate, or other person lawfully exercising the powers of a magistrate, and any assistant or deputy magistrate with special powers stationed at a place other than the sudder station of the magistrate and empowered to try cases without reference from the magistrate. The expression "country spirit" shall mean any spirit made by the native process of distillation. The expression "intoxicating drugs" shall include ganjah, bhang, churrus, and opium, and every preparation and admixture of the same. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number. Words importing the masculine gender shall include females. Act XXI. 1856, sect. 90.

board of revenue, commissioner, collector, magistrate, country spirit, intoxicating drugs, number, gender.

CHAPTER VII.

OF OFFENCES AGAINST THE LAWS RELATING TO THE CULTIVATION OF THE POPPY AND THE MANUFACTURE OF OPIUM.

3446. Any officer of the opium department who shall receive any fee, gratuity, perquisite, or allowance, either in money or effects, under any pretence whatsoever, from any cultivator, or from any other person employed or concerned in the provision of opium, other than the authorized allowances of his situation, shall be dismissed from his office, and, on conviction before a magistrate, shall be liable to a fine not exceeding five hundred rupees. Act XIII. 1857, sect. 17.

Penalty on officer taking bribe.

3447. Any cultivator entering into engagements for the cultivation of the poppy on account of government, who may embezzle, or otherwise illegally dispose of, any part of the opium produced, shall be liable to a penalty not exceeding ten times the fixed price of the opium which he may be proved to have so disposed of, or to a fine not exceeding five hundred rupees, if the amount of the said penalty be less than that sum; and the opium, if found, shall be liable to confiscation. Act XIII. 1857, sect. 19.

Penalty for embezzlement of opium by cultivator.

3448. Any person purchasing or receiving any opium from a cultivator or other person, who may have entered into engagements for the cultivation of the poppy, or who may be employed in the provision of opium on account of government, or bargaining for the purchase of opium with such cultivator or person, or in any way causing or encouraging such cultivator or person to embezzle or illegally dispose of any opium; and any officer of the opium department conniving in any way at the embezzlement or illegal disposal of any

Penalty for illegal purchase of opium from cultivator.

opium; shall be liable to a fine not exceeding rupees one thousand, unless the opium purchased, bargained for, or illegally disposed of, shall exceed the weight of thirty-one seers and a quarter, in which case the fine may be increased, at a rate not exceeding thirty-two rupees per seer for all such opium in excess of that weight; and the opium, if found, shall be liable to confiscation. Act XIII. 1857, sect. 20.

Penalty for unlicensed cultivation.

3449. Any person who shall cultivate the poppy without license from a sub-deputy agent or other officer duly authorized in that behalf, and any person who shall in any way cause, encourage, or promote such illegal cultivation, shall be liable to a fine not exceeding five hundred rupees, unless the quantity of land so illegally cultivated shall exceed twenty beegahs, in which case the fine may be at the rate of twenty-five rupees per beegah; and the poppy plants shall be destroyed; or, if any opium have been extracted from them, it shall be seized and confiscated. If the opium shall have been extracted and shall not be seized, the offender shall be liable to a further fine not exceeding the rate of thirty-two rupees per beegah of land illegally cultivated. Act XIII. 1857, sect. 21.

Duty of landholders and others to give information of illegal cultivation.

3450. All proprietors, farmers, tuhseeldars, gomashtahs, and other managers of land, shall give immediate information to the police or abkaree darogahs, or opium gomashtahs, or to the magistrates, collectors, or officers in charge of the abkaree mahal, or to the agents, their deputies, or sub-deputies, of all poppy which may be illegally cultivated within the estates or farms held or managed by them; and every proprietor, farmer, tuhseeldar, gomashtah, or other manager of land, who shall knowingly neglect to give such information, shall be liable to the penalties for illegal cultivation prescribed in the last preceding section. Act XIII. 1857, sect. 22.

Duty of police and other officers to give information of illegal cultivation.

3451. All police and abkaree darogahs, and opium gomashtahs, and all native officers, of government of whatever description, and all chokeedars, paiks, and other village police officers, shall give immediate information to the authority to which they are subordinate, when it may come to their knowledge that any land has been illegally cultivated with poppy; and such authority shall transmit the information to the sub-deputy agent, or other officer superintending the cultivation of the poppy, if in a district where the poppy is cultivated on account of government, or to the collector or officer in charge of the abkaree mahal, if in a district where the poppy is not so cultivated. Every police or abkaree darogah, opium gomashtah, native officer, chokeedar, or other police officer as aforesaid, who shall neglect to give such information, or shall in any respect connive at the illicit cultivation of the poppy, shall be liable to a fine not exceeding one thousand rupees if the offender be an officer of the opium department, or in any other case to a fine not exceeding five hundred rupees. Act XIII. 1857, sect. 23.

Police officers to assist in suppressing illicit cultivation, &c. of opium.

3452. All officers of police are strictly enjoined, under pain of dismission from office, to assist in suppressing the illicit cultivation, manufacture, sale, purchase, importation, transportation, or possession of opium. Reg. XX. 1817, sect. 29, cl. 9.

Police darogahs are to attach illicit crops, and to take security from the cultivator for his

3453. Whenever a police darogah obtains intelligence of any land within his jurisdiction having been cultivated with the poppy, except with the permission or on account of government, he is immediately to proceed to the spot, and if the information be correct

to attach the crop so illegally cultivated, and to report the same to the magistrate. He is, at the same time, to take security from the cultivator of the ground for his appearance before the collector or other officer in charge of the abkaree mahal; and, in the event of such cultivator not giving the required security, he is to send him in custody to the magistrate with the necessary witnesses to prove the quantity of land which has been cultivated by him with the poppy. Reg. XX. 1817, sect. 29, cl. 10 and 11.

appearance, or to send him to the magistrate with the evidence for the prosecution.

3454. Any police darogah, who knowingly permits the cultivation of the poppy within his jurisdiction, or who in any respect is convicted of conniving at the illicit cultivation of the poppy, is, besides being liable to dismission from office for neglect of duty, to be further subject on conviction before the magistrate to the payment of a fine, to be calculated at the rate of 20 rupees per beegah for whatever quantity of land has been so illegally cultivated within his jurisdiction with his knowledge or connivance: and the fine, if not duly paid, is commutable to imprisonment for a period not exceeding 6 months. Reg. XX. 1817, sect. 29, cl. 12.

Punishment of police darogah conniving at the illicit cultivation of the poppy.

3455. Whenever a police or abkaree darogah or opium gomashtah shall receive intelligence of any land within his jurisdiction having been illegally cultivated with poppy, he shall immediately proceed to the spot, and if the information be correct, shall attach the crop so illegally cultivated, and report the same without delay to the authority to which he may be subordinate. He shall at the same time take security from the cultivator of the said land for his appearance before the magistrate; and, in the event of such cultivator not giving the required security, he shall send him in custody to the magistrate. Act XIII. 1857, sect. 24.

Police or abkaree darogah how to proceed in case of illegal cultivation.

3456. Proprietors, farmers, tuhseeldars, gomastahs, and other managers of land, shall be at liberty to attach any poppy grown in opposition to the provisions of this Act in any estate or farm held or managed by them, and shall immediately report such attachment to the nearest police or abkaree darogah, or opium gomashtah, who shall thereupon proceed in conformity with the rules contained in the last preceding section. Act XIII. 1857, sect. 25.

Landholders, &c. may attach in cases of illegal cultivation.

3457. Except as otherwise herein provided, all fines, penalties, and confiscations prescribed by this Act, shall be adjudged by the magistrate on the information of the deputy agent or sub-deputy agent in districts in which the poppy is cultivated on account of government, and in other districts on the information of the collector or officer in charge of the abkaree mahal; provided that no information of an offence against this Act shall be admitted unless it be preferred within the period of one year after the commission of the offence to which the information refers. Act XIII. 1857, sect. 26.

Adjudication of penalties.

3458. When any person is sentenced to pay any fine or penalty under this Act, such person, in default of payment of the same, may be imprisoned by order of the magistrate for any time not exceeding six months, or until the fine is sooner paid. Act XIII. 1857, sect. 27.

Imprisonment in default of payment of fines under this Act.

3459. Whenever any person shall be convicted of an offence against this Act after having been previously convicted of a like offence, he shall be liable, in addition to the penalty attached

Punishment for repetition of offence.

to such offence, to imprisonment for a period not exceeding six months; and a like punishment of imprisonment not exceeding six months shall be incurred, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second. Act XIII. 1857, sect. 28.

Place of imprisonment under the last three preceding sections.

3460. Every person who shall be imprisoned under the last preceding section, or on account of the non-payment of any fine or penalty prescribed by this Act, unless such person be an officer of government or a village police officer convicted of an offence under sections 17, 20, or 23, shall be imprisoned in the civil jail. Act XIII. 1857 sect. 29.

Disposal of fines and forfeitures.

3461. One half of all fines and penalties levied from persons convicted of offences under sections 19, 20, and 21 of this Act, together with a reward of one rupee eight annas for each seer of opium confiscated and declared by the civil surgeon to be fit for use, shall, upon adjudication of the case, be awarded to the officer or officers who apprehended the offender, and the other half of such fines and forfeitures, together with a reward of one rupee eight annas for each seer of opium confiscated as aforesaid, shall be given to the informer. If in any case the fine or penalty is not realized, the board of revenue may grant such reasonable reward, not exceeding the sum of two hundred rupees, as may seem to them fit. Act XIII. 1857, sect. 30.

Governor general in council may allow free cultivation of poppy and manufacture of opium in any district.

3462. The governor general of India in council may authorize, by an order of government, the cultivation of the poppy and the manufacture of opium in any district or districts without license from a sub-deputy opium agent, or other officer of government; and, when such order has been published, all the provisions of this Act shall cease to have effect in such district or districts. Provided always, that the government may prescribe rules for the delivery of the opium so produced to officers of government appointed to receive it; and, when such rules have been passed, any cultivator or other person engaged in the cultivation of the poppy and manufacture of opium who shall dispose of any opium otherwise than is allowed by such rules, and any person who shall purchase or receive any such opium in contravention of the said rules, shall be subject to the penalties prescribed in section 19 of this Act; and such penalties may be adjudged by a magistrate on the information of any officer of government or of any other person. Act XIII. 1857, sect. 31.

CHAPTER VIII.

OF OFFENCES AGAINST THE SALT LAWS, IN THE LOWER PROVINCES.

Jurisdiction.

What cases regarding salt lie to the salt agent, and what to the magistrate, and civil judge.

3463. All suits, complaints, and informations for the recovery of any fine or penalty recoverable by government, or by the informer, on account of the illicit manufacture, sale, purchase, importation, transportation, or possession of salt, excepting complaints or charges preferred against public officers for a breach of their official duty, of which the cognizance is specifically reserved to the judges or magistrates, and excepting cases of adulteration of salt, are cognizable in the first instance by the salt agents and superintending officers of salt chokees, any thing in the existing regulations to the contrary notwithstanding. Reg. X. 1819, sect. 96.

Illicit manufacture, &c.

All native officers to assist in suppressing illegal manufacture of salt, under penalty.

3464. All native officers of government of whatever description, including all chokeedars, paiks, and other officers of village police, are strictly enjoined to assist in suppressing the illicit manufacture of salt, by giving instant information to the authority to whom they are immediately subordinate, whenever it comes to their knowledge that any illicit kalary or salt work has been, or is about to be, established in any village: and if any officer aforesaid neglects to give such information, or in any respect connives at the illicit manufacture of salt, such officer, besides being liable to dismission from office, is further subject, on conviction, to the payment of a fine* not exceeding 500 rupees for each kalary or salt work established or worked with his knowledge or connivance. Reg. X. 1819, sect. 34.

* *To be adjudged by the salt officers, under sect.* 109.

Magistrate to forward information to salt officers.

3465. Magistrates or other authorities, who receive information of the establishment of any illicit kalary, are immediately to transmit the information so received to the nearest salt agent or superintendent of salt chokees. Reg. X. 1819, sect. 35.

All native officers to assist in suppressing illicit sale, transportation, possession, &c. of salt, under penalty.

3466. All native officers of government of whatever description, and especially all such officers in the districts within which, or in the neighbourhood of which, salt is manufactured on the public account, or in those in which salt chokees are established, are specially enjoined, under pain of dismission from office, and the penalties herein specially provided, to assist in suppressing the illicit sale, purchase, importation, transportation, or possession of salt, by seizing the same if authorized to do so, or if not vested with the power of seizure by giving immediate information to the authority to which they are respectively subject of all instances of such illicit sale, purchase, importation, transportation, or possession of salt which come to their knowledge. Any magistrate or other officer, to whom such information is given, is immediately to transmit the same to the salt agent, or superintending officer of salt chokees. Any native officer aforesaid, who neglects to give information in the cases above specified, or who in any manner connives at the illicit sale, purchase, importation, transportation, or possession of salt, is, on conviction, liable to a fine* not exceeding 5 rupees for each and every maund of salt so sold, purchased, imported, transported, or possessed with his knowledge or connivance. Reg. X. 1819, sect. 54.

Magistrate to transmit information to salt officers.

* *To be adjudged by the salt officers, under sect.* 109.

Police officers to give information to the nearest salt officer, and to the magistrate, of illegal importation, transportation, manufacture, or adulteration of salt.

3467. If any officer of police receives information of any salt, not made in the Company's provinces, having been illegally imported into the said territories; or of salt of any description being transported without the proper rowannahs or charchitties; or of any salt being manufactured on account of individuals by molungees, or other-persons, at the kalaries or salt works established by individuals for the purpose of manufacturing salt on their own account, or that of any other person; or of the adulteration of salt by mixing it with the substance called "khari nún," or other substance such as "natron" or native fossil alkali, or the vegetable alkali or potash; such police officers are to transmit immediate notice thereof to the nearest officer in the salt department empowered to attach contraband or adulterated salt, and to the magistrate to whose immediate orders they are subject. Reg. XX. 1817, sect. 29, cl. 6.

Seizure.

Penalty for persons resisting salt officers attaching salt;

* *For rule for commutation of fine, see para.* 3512.

3468. Any person, who by force or threats prevents an officer of the salt department, or other officer authorized to attach salt, from effecting the seizure of any salt suspected to be contraband or adulterated, or who forcibly resists such officer in the execution of that duty, is liable, on conviction before a magistrate, to a fine not exceeding 200 rupees.* Parties offending are further liable, in the event of an affray or other breach of the peace occurring in consequence of their resistance, to be punished under the general rules applicable to such cases. Reg. X. 1819, sect. 56.

3469. The expression "further" in this rule does not mean that both penalties are to be awarded on one and the same indictment. A person might be tried for and convicted of the first offence, and fined by the magistrate; or the same party might be indicted and committed to the sessions for the second offence, and punished; but a cumulative sentence cannot be passed on an indictment for the latter offence only. Reports *L. P.* 1854, part 2, page 636.

or arresting parties.

3470. If any person by threats or violence prevents the lawful arrest of any person by an officer duly authorized to seize salt, or procures his release after arrest, or if the party found with the salt in possession or any other persons resist any such officers, they are severally and respectively liable to the punishment prescribed in the preceding paragraph. Act XXIX. 1838, sect. 19.

Salt officers attaching salt, who fear resistance, to apply to the police for aid.

3471. If any officer authorized to attach salt has seized, or is about to seize, any despatch of salt, on information or suspicion of its being contraband, or has effected or is about to effect the attachment of the cattle, carriages, or boats used in transporting such salt, and has reason to apprehend forcible resistance, such officer is to apply to the nearest darogah to aid him in the execution of his duty; and all darogahs or other officers in charge of thanas or chokees, to whom such application is made, or who have otherwise reason to apprehend the occurrence of a breach of the peace in consequence of a seizure of salt, are immediately to afford the requisite aid to effect the seizure and preserve the peace. Reg. X. 1819, sect. 57.

The police officers are to comply with such applications.

3472. The officers of police, as required by the above provisions(*a*), are to comply with applications made to them by a salt agent, or superintendent of a salt chokee, or by

(*a*) In the original is quoted cl. 2, sect. 11, Reg. VI. 1801; but the whole of that regulation is repealed by Reg. X. 1819, and the provisions quoted in the text have been enacted instead.

the officers attached to the salt department, or by any collector of revenue or customs, for assistance in effecting the seizure of salt illegally imported, manufactured, sold, or transported; and also for the seizure of adulterated salt, and for the attachment of the cattle, carriages, or boats used in transporting such salt. Reg. XX. 1817, sect. 29, cl. 5.

In such case no responsibility attaches to the police.

3473. Such seizures are to be made on the responsibility and at the risk of the officers authorized to seize, and the police officers are not competent to exercise any discretion in regard to the propriety or otherwise of the seizure, which they are called upon to support; but are to be careful to prevent any unnecessary violence. Reg. X. 1819, sect. 58.

Police officers are not to seize salt in the first instance of their own authority, unless specially empowered so to do;

*v. para. 3467.

3474. The police officers are to confine themselves to sending the information aforesaid* to the nearest officer in the salt department, and to the magistrate, and to assisting in the seizure of the salt, either under the orders of the magistrate or on application from the officers of the salt department; and are not to seize or detain any salt in the first instance of their own authority, except when they have been vested by government with special authority for making such seizures, in which case they are to receive separate instructions for their guidance in the performance of that duty. Reg. XX. 1817, sect. 29, cl. 7.

under penalty of dismission, and damages to be adjudged by the civil court.

3475. In all cases, in which it appears that an attachment or seizure of salt has been made by an officer of police without the special orders of the magistrate, or on application from any public officer authorized to require the assistance of the police officer, by whom such attachment is made; he is liable to dismission from office, and, on the institution of a regular suit in the dewanny adawlut on the part of the proprietor, to the payment of full damages to the whole amount of the loss and expense to which the proprietors have been subjected. Reg. XX. 1817, sect. 29, cl. 8.

Salt agent or superintendent attaching contraband salt in store within certain limits to summon the nearest police darogah to attend.

3476. On receiving certain information that contraband salt is stored in any place situated in the tract of country(a) in Bengal or Orissa within which the transportation of salt without rowannah is not lawful, the salt agent or superintendent of chokees is to proceed to seize it in person, if the place of such store be not too distant, together with the informant, summoning by written notice the nearest police darogah or other officer in charge of the police thana or station to attend likewise, and witness the proceeding. Act XXIX. 1838, sect. 3.

Salt agent or superintendent, having a police officer in company, may break open the door of the storehouse.

3477. For the purpose of making seizure of salt in store so informed against, it is competent to any salt agent or superintendent, having a police officer in company, to break open the door of the house, ware-house, or other place in which the salt is stated to be stored, if, upon requisition duly made, the door is not immediately opened by the owner or occupant thereof. Act XXIX. 1838, sect. 4.

(a) Such tract does not extend, within the delta of the Ganges and Megna rivers, beyond the line of the reach of the tides in the rivers communicating with the Bay of Bengal as taken at spring tides in the dry season; nor Eastward of the Megna, North of the river Goomtee; nor Westward of the river Hooghly, beyond a line drawn from a point on that river distant one mile from the Northern end of the town of Nyasaral and to the North thereof, to a like point distant one mile to the North of the town of Guttaul, and thence to a like point distant one mile to the North of the town of Midnapore, and thence to a like point distant one mile to the North of Huldipookur in Singbhoom, so as to include each of those towns respectively. Act XXIX. 1838, sect. 33.

The salt agent or superintendent may depute an officer, if he cannot proceed in person.

3478. If the salt agent or superintendent is not able to proceed in person to make a seizure of salt in manner above provided, he is to send along with the informer one or more confidential officers of his public establishment, not being under the rank of a jemadar of peons, giving to such officer or officers his warrant ordering and authorizing the seizure, and sending notice as above prescribed for the police darogah or other police officer to attend; and the officer so deputed has power to act in like manner as is provided for the agent or superintendent in person; provided that the door of no house, ware-house, or other place, is to be broken open to make a seizure of salt except in the presence of a salt agent or superintendent of chokees, or of an officer so specially deputed, and of an officer of police. Act XXIX. 1838, sect. 5.

Forcible entry illegal, except in the presence of certain officers.

But the head officer of a salt chokee or aurung may act for the agent if the place is more than 3 kos from the station of the agent or superintendent.

3479. It is competent to the head officer of any salt chokee, or aurung for the manufacture of salt, on receiving information of salt exceeding one maund in quantity being in store in a house, ware-house, or other place, to act thereupon as provided in sects. 3 and 4 for the salt agent and superintendent, provided that the place of store described in such information be situated at a distance of more than three kos from the station of a salt agent or superintendent of chokees, or from the place where the salt agent or superintendent may be. Act XXIX. 1838, sect. 6.

Penalty if police officers refuse to attend on such application, or in any way frustrate the object of the search and seizure.

3480. If the darogah, or person in charge of any police station or thana, receiving notice to attend at a seizure of salt in store, as is above prescribed, does not attend or attending refuses to act in aid of the seizure, or in any way wilfully frustrates the object of the search and seizure, such darogah or other officer is, on representation of the facts by the officers of the salt department, and on conviction of the same before the magistrate of the district, besides being dismissed from office, liable to a fine equal to the amount of fine that would have been leviable on the owners of the salt, if it had been seized according to the information laid. Act XXIX. 1838, sect. 7.

Rules for breaking open any house, &c.

*v. note page 306.

No responsibility rests with the police in such cases.

3481. Whenever it is necessary to break open any house, ware-house, or other place, to effect a seizure of salt, the rules and precautions prescribed in Reg. XX. 1817, and sect. 10, Reg. VII. 1799*, for breaking into a house for execution of process of distraint, are always to be observed by the police officers in attendance; provided however that the responsibility for the act, and the determination whether to require the door to be broken open or not, rest with the officers of the salt department only. Act XXIX. 1838, sect. 8.

Reports to be made by the salt, and police officers;

3482. If the seizure is made by an officer of the salt department other than an agent or superintendent of chokees, such officer is to report the circumstances within twenty-four hours to his official superior; and the police officer in attendance is likewise to report the occurrences at the time of seizure to his official superior. Act XXIX. 1838, sect. 10.

in which the date and time of delivering the notice to the police officer is to be noted.

3483. The salt officer bearing the notice as aforesaid, and the police officer receiving such notice, are to specify in their respective reports the date and exact time when the notice was delivered to the latter: and, if any delay occurs in effecting the search, the said officers are to record the circumstances at full length in their respective reports. Reg. X. 1819, sect. 62.

Power to seize salt vested in whom.

3484. The authority to seize salt, and other articles liable to seizure and confiscation, under the rules of this regulation, is to be exercised, in virtue of their offices, by salt agents and superintendents of salt chokees, and their assistants, uncovenanted European and subordinate native officers. But government has the power of vesting a like authority in such of the magistrates, collectors, or officers of the customs, abkaree, and opium departments, and their subordinate officers respectively, as is deemed fit. Reg. X. 1819, sect. 71, cl. 1.

If such power is vested in subordinate officers of magistrate, they are to report to him within 24 hours after making seizure.

3485. Provided, however, that all uncovenanted European or native officers, making a seizure under the powers vested in them by this regulation, or by the special orders of government, are within 24 hours after making such seizure to communicate their having done so, with a report of the circumstances connected with the seizure, to the authority to which they are respectively subject; and the magistrate or other officer, to whom information of a seizure is thus communicated, is immediately to transmit the report to the nearest salt agent or superintending officer of salt chokees, to whom all salt so seized is to be delivered. Reg. X. 1819, sect. 71, cl. 2.

Salt officer how to act on information of illicit manufacture in any ware-house, &c.

3486. Any salt agent or superintendent of salt chokees, and also any assistant to a salt agent or superintendent, or any head officer of any salt chokee or aurung, to whom information is given that salt is unlawfully manufactured in any ware-house, dwelling house, or other enclosed place, within his jurisdiction, may act upon such information in the same manner as in Act XXIX. 1838 he is authorized to act, upon information given him of salt exceeding one maund in quantity being in store in a house, ware-house, or other place; and all freshly manufactured salt found by such officer is liable to seizure together with the implements of manufacture; and the provisions of sects. 2 to 10 Act XXIX. 1838 as to the receipt of information and the manner of search and seizure, and of section 23 of the same Act as to the penalty for false and malicious information, are to be applicable to information given and search and seizure made under this Act. Act III. 1851, sect. 1.

None but officers so empowered can make seizure

3487. The salt officers being alone empowered to attach of their own authority, and by virtue of their offices, salt which they know or suspect to have been illegally manufactured, imported, sold, or transported, no officers excepting those above described are to seize or detain salt, unless specially vested by government with authority to that effect. Reg X. 1819, sect. 72.

Subordinate native officers so empowered how to proceed on receiving information of the illegal importation, transportation, or manufacture of salt.

3488. Whenever any of the native officers subordinate to a magistrate, collector, or officer in charge of the abkaree mahal, or a collector or deputy collector of customs, who are specially authorized by government to seize salt, receive information of any salt not made in the Company's provinces of Bengal and Orissa on account of government, having been illegally imported into the said territories; or of salt of any description being transported or stored within the limits of the salt chokees without the proper rowannah(*a*),

(*a*) A *rowannah* bears the seal of the salt office and the signature of the secretary or one of the covenanted assistants attached to the board of revenue. It specifies the quantity of salt intended to be transported under it; the date of the sale; and number of the lot in part or in full of which the salt is deliverable; the mode of conveyance; the place to which the salt is to be transported, and the route by which it is to be conveyed. Such rowannahs are current for only one year from their date, after which they are wholly null and void, and in no degree protect any salt which they accompany. Reg. X. 1819, sect. 36, cl. 2.

chalan(*a*), charchitty(*b*), or special pass(*c*); or of any salt being manufactured on account of individuals by molungees or other persons at the kalaries, or salt works established on account of the Company, or at any kalaries or salt works established by individuals for the purpose of manufacturing salt on their own account, or that of any other persons; the several officers aforesaid are, as above directed, to transmit immediate notice thereof to the nearest officer in the salt department, empowered to attach contraband salt, and to the magistrate or other functionary to whose immediate orders they are subject, and are further to be guided by the following rule. If the salt is accompanied by a regular rowannah, chalan, charchitty, or special pass, the native officers are to confine themselves to sending the information aforesaid to the nearest officer in the salt department, and to the European functionary to whom they are subordinate, and to assist in the seizure of the salt either under the orders of their immediate superior, or on application from the officers of the salt department, and are not to seize or detain any salt accompanied by such papers in the first instance of their own authority; but if any despatch of salt is unaccompanied by the rowannah, chalan, charchitty, or special pass, as aforesaid, the said officers are empowered of their own authority to detain the salt, sending without delay notice of the detention of the salt to their superior, and to the nearest officer in the salt department. Any native officer of government (not being an officer attached to the salt department) unless specially authorized to do so, as well as any such officer, who, though specially authorized as above, seizes or detains salt accompanied by a regular rowannah, chalan, charchitty, or special pass, is liable to be dismissed from his office; and to be prosecuted for damages in the dewanny adawlut by the owner or holder of such salt. Reg. X. 1819, sect. 73.

Penalties for breach of these rules.

3489. If salt has been seized by the officers or under the orders of a magistrate, or by the orders of any collector of revenue or customs, or deputy collector, or any officer in charge of the abkaree mahal, or opium agent or his deputy, previously to the delivery of such salt to the officers of the salt department, and such magistrate, collector, or other

If salt has been seized by order of magistrate, he is empowered to release it before delivery to the salt officers.

(*a*) A *chalan*, in all practicable cases, is to be signed by the agent or other European officer in charge of the golahs, as well as by the darogah or other head native officer of the golah station at which the salt is delivered. It specifies the quantity of salt laden on the boat, vessel, or karroo of bullocks; the date of the sale; and number of the lot in part or in full of which the salt is delivered; the name of the original purchaser at the sale; and of the present proprietor of the salt; the number of the rowannah by which the salt is covered, and the total quantity of salt covered by the same; the name of the gomashtah who receives the salt; of the proprietor of the boat, vessel, or karroo of bullocks, on which the salt is laden; and of the manjee, sarang, or sirdar, in charge of such boat, vessel, or karroo; the description, burden, and number of oars of the boat or vessel, and the number of bullocks in the karroo; also the place of destination of the salt. Reg. X. 1819, sect. 36, cl. 4.

(*b*) A *charchitty* has affixed to it the signature of the darogah or mohurir of the salt chokee whence it was issued, and specifies the quantity of salt covered by it, which quantity must be less than 100 maunds of 82 sicca weight to the seer; also the time for which it is current, which is never to exceed 6 months; the number of the rowannah from which the salt is written off; and the limits within which the salt is to be sold. The charchitty is current only within the limits subject to the control of the darogah by whom it has been granted, and does not cover salt in its transit through the chokees subordinate to any other darogah. Reg. X. 1819, sect. 36, cl. 5 and 6.

(*c*) A *special pass*, or *atrafee rowannah*, for the conveyance of salt not exceeding 100 maunds to any place beyond the line of the chokees within which the salt is stored, is duly registered, signed, and sealed by the secretary to the board of revenue or one of the covenanted assistants of the board, as a rowannah. Its currency in no case exceeds the period of 6 months. Reg. X. 1819, sect. 36, cl. 7 and 8.

officer aforesaid, is of opinion that the salt was seized on false or erroneous information, and that the salt is not liable to confiscation, he is empowered to release the salt. Reg. X. 1819, sect. 75, cl. 3.

Magistrates to communicate to agent all information regarding salt received from police officers.

3490. The magistrates are to cause to be communicated, in the manner which appears to them most convenient, to the salt agent or superintending officer of chokees, the particulars of all information received from the police officers, and also of all applications made to those officers by the officers in the salt department, or by any officer empowered to attach salt, for assistance in the seizure of salt. Reg. X. 1819, sect. 76.

When contraband salt is seized, the persons conveying it are to be arrested.

3491. Whenever salt is seized as contraband, because unaccompanied by any rowannah or other protecting document, the person or persons conveying or having in charge the same are to be apprehended; and all officers, who are empowered to seize salt under the above provisions, are likewise competent to arrest the parties found with or having the salt in possession. Act XXIX. 1838, sect. 12.

Officers empowered to seize salt may stop and search certain vessels.

*v. note to para: 3476.

3492. It is lawful for the salt agents and superintendents of salt chokees, and other officers, who are duly empowered to seize salt, to stop and search any boats or vessels of a build adapted for sea navigation, that are found within the limits described in sect. 33*; and if salt is found thereon, not accompanied by the necessary rowannah or other protecting document, to detain the vessel with the crew thereof, and to take them for adjudication of the case to the nearest accessible station of an officer empowered to adjudicate cases of contravention of the salt laws. Act XXIX. 1838, sect. 13.

Persons arrested are to be carried direct to the nearest salt officer competent to try the case; and once arrested are not to be released.

3493. Whenever any person is arrested by an officer of the salt department, or by any other officer of other departments duly empowered to make a seizure of salt, the person making the arrest is bound to carry the party arrested direct to the officer of the salt department, who is competent to try the case; and no person so arrested is to be released, until the case has been brought to judgment in the manner provided by law. Act XXIX. 1838, sect. 21.

Misconduct of salt officers.

Penalties for an officer in salt-employ taking fees, or misappropriating advances entrusted to him, or taking or receiving false receipt.

3494. Officers of every description in the employment of salt agents, or superintending officers of salt chokees, are prohibited from taking or receiving any fee, gratuity, perquisite, or allowance, either in money or effects, under any pretence whatever, from any molungee, or other person employed or concerned in the manufacture of salt: and, if any such description of person subject to the authority of the salt agent, or superintending officer, is convicted before the magistrate, within whose jurisdiction the offence has been committed, of disobedience to this prohibition, he is to be adjudged by the court to refund the money or things so taken or received; and, besides being dismissed from his office by the officer or authority to which he is subject, he is further liable to imprisonment for any term not exceeding 6 months, which the court judges proper, together with such fine (not exceeding 500 rupees, for every 100 rupees, in amount or value taken or received as aforesaid) as appears adequate to his offence*: provided also that the above rule is held applicable to any officer entrusted with the payment of advances to the molungees, who, under any pretence or color whatsoever, appropriates to his own use the whole or any part thereof, or who takes or requires

*For rule for commutation of fine, see para. 3512.

from any molungee, or other person employed or concerned in the manufacture of salt, a receipt or other written acknowledgment for a larger sum than has been actually paid to him. Reg. X. 1819, sect. 63.

Officers embezzling salt, or permitting it to be carried off without order, or granting false receipts, are to be punished as for theft.

3495. Any officer in charge of a salt golah or any ware-house or other place in which salt, the property of government, is stored, who embezzles any of the salt received into any such golah or place of deposit entrusted to his charge; or who knowingly permits any salt so received to be carried from such golah or place of deposit, without an order from the agent to whom he is subordinate; or who so permits to be carried from such golah or place aforesaid a greater quantity of salt than is specified in such order; or who knowingly grants a receipt for a larger quantity of salt than is received and stored by him; is to be held guilty of theft, and punished accordingly, on conviction before a competent criminal court. Reg. X. 1819, sect. 64.

And it is sufficient proof of embezzlement that the out-turn of the golah exhibits a deficiency for which they cannot account.

3496. But in modification of the above provision and in addition thereto, it is enacted that when there is no direct proof of the unauthorized removal of salt from any golah or place of government store, sufficient to convict the parties concerned therein of theft within the above provisions, the officer or officers, who have been entrusted with the charge of such golah or place of government store, are nevertheless liable for the offence of embezzling the salt of any store in their custody, the out-turn of which exhibits, according to the accounts kept of receipts and deliveries, a deficiency for which he or they may not duly account. And the officer in charge of any golah or salt store is in like manner to be deemed guilty of embezzlement, if he has made away with or does not produce the true account of such store: and any person, against whom the offence of embezzlement is established under this section, is liable, on conviction before the magistrate, to be punished by fine and imprisonment, under the general powers vested in the magistrates. Act XXIX. 1838, sect. 28.

Penalty for not producing the account.

Punishment for embezzlement.

Such cases not to be committed to sessions.

3497. In a case under this section the magistrate committed a prisoner to the sessions and the judge sentenced him to imprisonment for 4 years. But the sudder court held that, under the peculiar wording of the law, no punishment in excess of the general powers laid down in sect. 19, Reg. IX. 1807 is legal; and that the magistrate should have disposed of the case himself. On this account the proceedings were quashed, and the papers of the case were returned to the magistrate for that purpose. Reports *L. P.* 1851, page 476.

Punishment of salt officers vexatiously and unnecessarily seizing goods, or arresting any person, or detaining any boat.

3498. If any officer of the salt department is convicted before the magistrate of having vexatiously and unnecessarily seized the goods of any person on the pretence of seizing or searching for salt; or of having vexatiously and unnecessarily arrested any person; or of having stopped and detained any boat unnecessarily and without authority; or of having detained any boat longer than is necessary for the purpose of search; every such officer is, besides dismissal, to be punished with imprisonment not exceeding 6 months, and with fine not exceeding 200 rupees, commutable if not paid to a further imprisonment not exceeding 6 months. Act XXIX. 1838, sect. 22.

Punishment for extortion.

3499. The provisions of sect. 38, Reg. IX. 1810, which declares native officers in the customs department subject for extortion to imprisonment, fine, and corporal punishment,

are not applicable to the native officers in the salt department. But, though there is no corresponding enactment in Reg. X. 1819, the officers of the salt department are of course amenable to justice for acts of extortion under the general regulations. Const. No. 476.

Adulteration.

Certain kinds of adulterated salt to be confiscated and destroyed.

Penalty on persons adulterating it, or selling such,

3500. Any common or alimentary salt, adulterated by an artificial admixture with the substance called khari nún, or mixed with phulkhari nún, puckwa salt, or any description of impure and bitter salt, which is found in any golah, or shop, in any place whatsoever, is to be confiscated and destroyed; and any salt merchant, or other person selling salt, wholesale or retail, who so adulterates it, or knowingly sells any salt so adulterated, is to pay a fine calculated at the rate of 10 rupees per maund of 82 sicca weight to the seer upon the quantity which is found so adulterated. Reg. X. 1819, sect. 77.

to be adjudged by the magistrate on a summary inquiry, instituted on the report of the officer seizing such.

3501. Salt adulterated in any of the modes above stated is to be seized by all officers empowered by this regulation to seize salt, who immediately on making any attachment, or seizure, are required to report the circumstance to the magistrate within whose jurisdiction the attachment has been made;—the magistrate, on receiving such report, is without delay to institute a summary inquiry into the circumstances of the case; and, if it appears to him that the salt has been adulterated as aforesaid, and is in consequence liable to confiscation, he is to proceed to confiscate it accordingly, and to levy the prescribed fine, commutable if not paid to imprisonment in the dewanny jail for a period not exceeding 6 months. Reg. X. 1819, sect. 78.

Magistrate in what manner to ascertain whether the salt is adulterated.

3502. In cases of attachment of salt alleged to be adulterated with khari nún, or any other salt of the description above specified, the magistrate is without loss of time to ascertain the fact by reference either to the civil surgeon of the station for examination, or to a committee of respectable merchants or dealers in salt, or in any other mode that appears most likely to elicit the truth. Reg. X. 1819, sect. 79.

Magistrate to stay proceedings, if the proprietor of the salt give security for the fine, and institutes a suit in the civil court against the officer who seized the salt within one month.

3503. Provided always, that if the proprietor of such confiscated salt, being dissatisfied with the order of confiscation, immediately gives responsible security for the amount of the penalty, and further, within a period of one month, institutes a regular suit in the dewanny adawlut against the officer, who seized the salt, for damages,—in such case the magistrate is to suspend the execution of his order and to stay all further proceedings: but if, at the expiration of one month from the date of the order of confiscation, no suit has been instituted by the proprietor of the salt, the magistrate is without further delay to levy the penalty from his security, and otherwise to carry the order of confiscation into full effect. Reg. X. 1819, sect. 80.

Magistrate may dispense with security, taking bail for his appearance.

3504. In all cases where any proprietor of salt confiscated for being adulterated with khari nún, or any of the substances aforesaid, is unable to give the above security for the amount of the penalty, the magistrate, upon his being satisfied of the inability of the party to give security, is empowered to dispense with security, taking from the party bail for his appearance only to abide the issue of the suit; or, in the event of the suit not being instituted within the period prescribed by the preceding section, to answer in his own person

the amount of the penalty; and in the meantime the magistrate is to keep the salt under attachment. Reg. X. 1819, sect. 81.

Salt to be held under attachment pending suit.

3505. In the event of a regular suit being instituted for the purpose of setting aside the order of confiscation, the salt is to be held under attachment by the court until a final decision is passed in the cause. Reg. X. 1819, sect. 84.

The above rules are applicable to panga salt mixed with certain other kinds;

but the fine is to be less;

and such salt is to be disposed of as government directs.

3506. The rules contained in the six foregoing paragraphs, with regard to the adulteration of alimentary salt with khari nún and other descriptions of impure and bitter salt, are equally applicable to all panga salt, which is found within the provinces of Bengal, Behar, and Orissa, mixed with balumba, salumba, or other salt not being salt sold on account of government, or imported by sea under the provisions of the customs laws(*a*); excepting that any person who sells, or in whose possession salt of this description is found, he knowing the same, is, besides the forfeiture of the salt, to pay to government the sum of 5 rupees for every maund of 82 sicca weight upon the quantity which is so mixed, instead of 10 rupees per maund as prescribed in sect. 77; provided further that salt of this description, which is confiscated, is not to be destroyed, but is to be disposed of in such place without the limits of the provinces of Bengal, Behar, and Orissa, and in such manner as is directed by government. Reg. X. 1819, sects. 85 and 93.

If seizure is made by native officers without information they are entitled to half the fine;

3507. When attachments or seizures of salt adulterated with khari nún, or other salts of the nature described above, are made wholly by the native officers of government, and not upon any information furnished to them, they are entitled to receive one moiety of the fine, which is levied from the offender, agreeably to the rule prescribed above, and the other moiety is to be carried to the account of government. Reg. X. 1819, sect. 94, cl. 1.

If with information, to one-third, and the informer to one third.

3508. If any other person or persons give information of salt being so adulterated to the native officers of government, and the salt is seized in consequence of such information, he or they are entitled to receive one-third of the fine which is levied as above prescribed, and the officer, who has made the seizure, is entitled to receive also one-third of the amount: the remaining third is to be carried to the account of government. Reg. X. 1819, sect. 94, cl. 2.

Proceeds of sale of boats, &c. to be divided in the same manner.

3509. The boats, carriages, &c., on which such adulterated salt is loaded, together with the horses, bullocks, and other cattle employed in its transportation, are to be forfeited and sold by public sale; and the proceeds of the sale are to be distributed in the manner above mentioned for the distribution of the fine levied from the offender. Reg. X. 1819, sect. 94, cl. 3.

Board of revenue may remit any portion of such fine and penalty.

3510. In all cases in which any salt is forfeited to government under the rules contained in this regulation, or in which any person has been subjected to the penalties prescribed in sect. 77, it is competent to the board of revenue, on application from the party, to call for a report of the circumstances of the case from the salt agent or superintendent, by whom it was in the first instance investigated, and to remit any portion of the fine or penalty which has been imposed. Reg. X. 1819, sect. 117, cl. 1.

(*a*) Reg. XV. 1817 is mentioned in the text; but that has been repealed by Act XVI. 1837.

False information.
Punishment of persons wilfully and maliciously giving false information regarding salt in store.

3511. If any person wilfully and maliciously gives false information in respect to there being illicit salt in store in any house or ware-house, and so procures that such house or ware-house is searched to the injury or vexation of the owners thereof, or of any other person or persons whatsoever, such false informer is, on conviction of the offence before any magistrate, liable to imprisonment for two years, and to a fine not exceeding 500 rupees, at the discretion of any magistrate by whom the case is tried, and in case of the non-payment of the fine to imprisonment for a further period of six months. Act XXIX. 1838, sect. 23.

Fines and imprisonment.
Rule for commutation of the above fines to imprisonment.

3512. Whenever a penalty or fine is adjudged against any person under the provisions of this regulation, it is competent to the officer or authority adjudging the same, in case the amount is not discharged, to award a period of imprisonment in commutation according to the following scale, in addition to such imprisonment as such officer or authority is specially empowered to adjudge :

if the amount of the fine or penalty does not exceed 50 rupees,—the imprisonment to be awarded in commutation is not to be less than 15 days, and not more than one month :

if the amount of the fine or penalty exceeds 50, and is less than 100 rupees,—the imprisonment to be awarded in commutation is not to be less than one month, and not more than 2 months :

if the amount of the fine or penalty exceeds 100, and is not more than 500 rupees,—the imprisonment to be awarded in commutation is not to be less than 2 months, and not more than 4 months :

if the amount of the fine or penalty exceeds 500 rupees,—the imprisonment to be awarded in commutation is not to be less than 4 months, and not more than 6 months.

Reg. X. 1819, sect. 110.

Persons confined under these rules to be imprisoned in the civil jail; except when persons concerned in illicit manufacture, or native officers causing it to be manufactured on their own account, or molungees embezzling, are sentenced to imprisonment in addition to fine; or persons smuggling are sentenced to imprisonment in lieu of fine.

3513. All persons sentenced to imprisonment under the provisions of this regulation, and all persons confined for non-payment of the fines to which they are liable, are to be confined exclusively in the dewanny jail. Reg. X. 1819, sect. 121.

3514. But persons convicted of having been concerned in or having encouraged or promoted the illicit manufacture of salt,—or officers or servants employed in the salt department, or any other native officer of government, convicted of causing salt to be obtained from the manufacturers or other persons employed in the salt department otherwise than on account of government, or of having caused salt to be manufactured for their own benefit, or of having knowingly permitted such manufacture for the benefit of any other person,—or molungees, or others receiving advances for the manufacture of salt on account of government, convicted of embezzlement of the salt for the provision of which they received advances from government, or of otherwise illegally disposing of any salt manufactured by them,—and sentenced to imprisonment in addition to fine, are to undergo such punishment in the foujdaree jail. And so, persons convicted of smuggling salt without

rowannah singly or in gang, and sentenced to pay a fine to government, are, if the fine is not paid, to be imprisoned in the foujdaree jail. And the warrant of the officer adjudicating any such case is authority for the magistrate, or other person in charge of the foujdaree jail, to hold the person described therein in confinement in such jail, as is specified and required in the said warrant. Act XXIX. 1838, sects. 15 and 16.

The warrant of officer adjudicating is authority for the magistrate to hold persons in confinement.

Salt lands.

Penalty for persons illicitly cultivating, clearing, or ploughing lands transferred to the salt department.

3515. No cultivation is to be allowed within the limits of any chur or other lands transferred to the salt department, unless with the permission of the board of revenue so long as the manufacture is continued on the same; and it is lawful for the salt agent and his subordinate officers to attach, confiscate, and dispose of, as is directed by the board, any crops grown on such land in contravention of this rule, and to require the police to aid him in doing so. And any person illicitly cultivating, clearing, or ploughing such land, or doing any act preparatory to its cultivation and clearance, or causing another to do so, is, on conviction before a magistrate, subject for every such offence to a fine not exceeding 500 rupees, besides being liable in a civil action for any damages, which the salt department sustains. Provided, however, that if any chur or salt land occupied as above becomes through natural causes useless for the purposes of the salt department, the proprietor thereof is to be entitled to recover possession of the same, on establishing the fact to the satisfaction of the board of revenue or by a regular suit in court, and on relinquishing the compensation paid to him by the salt agent for the use of the land. Reg. I. 1824, sect. 12.

Such fines commutable to imprisonment.

* *v. paras.* 1342 *and* 1347.

3516. Fines imposed under the above rule are to be commuted to imprisonment under the provisions of sect. 3, Reg. XIV. 1797,* and sect. 19, Reg. IX. 1807, whenever the party, on whom the fine is imposed, neglects to pay it. Const. No. 388.

CHAPTER IX.

OF OFFENCES AGAINST THE CUSTOMS AND SALT LAWS IN THE WESTERN PROVINCES.

Import and export duties leviable in Western provinces.

3517. The following and no other duties of customs are leviable upon import and export of articles into and from the North Western provinces of the presidency of Bengal, that is to say:—On the import of salt, of all descriptions, two rupees per maund, and a further duty of one rupee per maund on the transmission thereof to the Eastward of Allahabad. On the import of cotton, uncleaned, four annas per maund; cleaned, eight annas per maund. On the export of misri, kund, chini, and all clayed and refined sugar, eight annas per maund; goor, rûb, sheerah, and all unclayed and unrefined saccharine produce, three annas per maund. The import of sugar into any part of the said provinces, is, and shall remain, prohibited. Act XIV. 1843, sect. 2.

Government to make rules for collection of such duties.

3518. It shall be lawful for the government of the said provinces from time to time to make and issue such orders as may be deemed expedient for the collection of the aforesaid

duties in such manner, and upon such line or lines, and at such places on or near such line or lines, as may seem fit; and all such orders shall have the same force as if they formed a part of this Act from the date notified in the gazette, wherein they shall be published. Act XIV. 1843, sect. 3.

Salt not to be manufactured without permission of government.

3519. The manufacture of alimentary salt throughout the Western provinces without the express sanction of the government, is prohibited; and any person engaging in the manufacture of such salt, or preparing or causing to be prepared works for the manufacture of such salt, without such sanction, and all zumeendars or other proprietors of land, or their agents, conniving at such illicit manufacture, shall, on conviction by the magistrate, within the limits of whose district the offence may have occurred, be punished by a fine not exceeding 500 rupees, and, on non-payment of such fine, by imprisonment not exceeding six months with or without hard labor; and all works at which such manufacture shall have been conducted, or which are designed for such manufacture shall be destroyed, and any salt which may be manufactured or stored thereat shall be seized and confiscated. Act XIV. 1843, sect. 4.

Penalty.

Collectors may destroy salt works, and seize salt.

3520. It shall be lawful for the collectors of customs and the collectors of land revenue, within their jurisdictions, to destroy all works for the manufacture of salt, and to seize the salt stored thereat, and to apprehend the persons concerned in the manufacture thereof, and to make them over for trial to the magistrate within the limits of whose district the offence may have occurred. Act XIV. 1843, sect. 5.

Particulars to be recorded by officer on receipt of information as to unlawful manufacture or store of salt.

3521. Whenever any collector or other officer of customs or land revenue, not being under the grade of assistant patrol in the customs department, or of naib tuhseeldar in the revenue department, receives credible information that, within his jurisdiction, salt is unlawfully manufactured, in any dwelling-house, ware-house, or other enclosed place, or that salt is unlawfully stored in any such house or place within the limits of customs jurisdiction as defined by the government of the North-Western provinces of the presidency of Bengal under the provision of section 3, Act XIV. 1843, he shall first record in writing the name, residence, and calling of the informant, the locality and description of the house or place where he believes the salt to be manufactured or stored, and the name of the owner or occupant of such house or place, or the name of the person for or by whom such salt is manufactured or stored, and with respect to salt stored the supposed quantity and description of such salt, with the grounds for believing the same to be contraband. Act XXXVI. 1855, sect. 1.

Officer thereupon may summon police and proceed to search a house for contraband salt.

Proviso.

3522. The said officer, after recording the particulars aforesaid, may summon from the nearest police station a police officer, not being under the grade of a jemadar, to attend him, and with such police officer and informant proceed to the said house or place, and in their presence search the same for salt unlawfully manufactured or stored; provided that such search be not made between sunset and sunrise. Act XXXVI. 1855, sect. 2.

Officer may break open doors.

3523. The said officer, in company with such police officer, may break open the door or force an entry within the said house or place, if, upon requisition duly made, the door be not opened, or admission be refused, by the owner or occupant thereof. Act XXXVI. 1855, sect. 3.

Rules regarding forcible entry.

3524. A forcible entry under the last preceding section shall only be made in accordance with the rules and precautions prescribed by Reg. XX. 1817, and by sect. 10, Reg. V. 1800 (for the Benares province), and sect. 19, Reg. XXVIII. 1803 (for the ceded and conquered provinces), for breaking into a house for execution of process of distraint.* Provided, however, that the responsibility for the act, and the determination whether to force an entry or not, shall rest with the officer of customs or land revenue only. Act XXXVI. 1855, sect. 4.

Proviso.

* *See note to para.* 1687.

What to be deemed contraband salt.

3525. No salt found stored in any house or place within the limits of customs jurisdiction mentioned in section 1 of this Act, not being salt unlawfully manufactured thereat, shall be deemed contraband, unless the quantity found shall exceed five seers in weight. Act XXXVI. 1855, sect. 5.

Penalty if police officer refuses or neglects to attend or aid in search or seizure.

3526. Whoever, being a police officer summoned under section 2, fails to attend himself or to depute a subordinate police officer, not being below the grade of a jemadar, to attend; and any police officer who, after attending, refuses to aid in the search for, or seizure of, contraband salt, or in any way wilfully frustrates the object of the search or seizure; shall, on conviction before a magistrate, be liable, besides being dismissed from office, to a fine equal to the amount of fine that would have been leviable on the owners or holders of the salt, if it had been seized according to the information laid. Act XXXVI. 1855, sect. 6.

Penalty for vexatious search and for giving false information.

3527. Any officer of customs or land revenue, vested with power to carry into effect the provisions of this Act, who, under cover thereof, searches or causes to be searched any dwelling-house, ware-house, or other enclosed place, without reasonable grounds of suspicion that contraband salt is there manufactured or stored, shall, upon conviction before the magistrate within whose jurisdiction the offence may have been committed, be punished with fine not exceeding five hundred rupees, which fine or any portion thereof may be paid over to the party aggrieved, and, in default of payment of such fine, with imprisonment for a period not exceeding six months; and any person wilfully and maliciously giving false information, and so causing a search to be made in any dwelling-house, ware-house, or other enclosed place, to the injury or vexation of the owners, occupants, or any other person or persons whatsoever, shall, on conviction before a magistrate, be liable to the same penalty and also to imprisonment for a period not exceeding two years with or without hard labor. Act XXXVI. 1855, sect. 7.

Every case of search to be reported to superior officers.

3528. Every search under this Act, whether the result thereof be the seizure of contraband salt or otherwise, shall be reported within forty-eight hours by the officer of customs or land revenue and by the officer of police present at the search to their respective official superiors. Act XXXVI. 1855, sect. 8.

What to be deemed a manufacture of salt.

3529. The purification or refinement of impure salt, obtained in the manufacture of saltpetre, so as to produce alimentary salt, shall be deemed a manufacture of salt within the meaning of this Act and of Act XIV. 1843. Act XXXVI. 1855, sect. 9.

Penalties for importing sugar, and smuggling goods.

3530. All sugar imported into the said provinces, and all articles imported or exported without payment of the duties imposed by this Act, or in contravention of the orders which may be made and issued under the provisions thereof, and all boats, carriages and convey-

ances, and all animals used in transporting the same, shall be liable to be seized and confiscated in the manner hereinafter mentioned. Act XIV. 1843, sect. 6.

Penalty for evading duties.

3531. All persons evading or attempting to evade the payment of the duties imposed by this Act, and all persons aiding or abetting such attempts or evasions, or in any manner acting in contravention of this Act, or of any order made and issued under the provisions thereof, and all zumeendars and other proprietors of land, or their agents, who shall wilfully connive at such attempts or evasions or aid such acts, shall, on conviction by the magistrate, within the limits of whose district the offence may have occurred, be punished by a fine not exceeding 500 rupees, and on non-payment thereof by imprisonment not exceeding six months with or without hard labor. Act XIV. 1843, sect. 7.

Power of customs officers to search.

3532. It shall be lawful for all officers of customs department to search any carriages and conveyances, and any packages, upon reasonable grounds of suspicion that such carriages, conveyances, or packages, contain any articles made subject to duty, or prohibited to be imported by this Act, and to detain all such articles as may be liable to confiscation under the provisions thereof. Act XIV. 1843, sect. 8.

Seizures to be reported by collectors to revenue commissioner for orders.

3533. Whenever any articles or goods shall be seized or detained under the provisions of this Act, the collector or deputy collector of land revenue or customs, within whose jurisdiction such seizure or detention shall occur, shall, with all practicable expedition, report the case for the determination of the commissioner of revenue; and it shall be lawful for such commissioner to declare such articles or goods to be confiscated, or to impose such lesser penalty in lieu thereof as to him may seem fit. Act XIV. 1843, sect. 9.

Customs officers may apprehend for breach of these laws.

3534. It shall be lawful for all officers in the customs department to apprehend any person upon reasonable grounds of suspicion that such person is liable to punishment under this Act, and to make him over for trial with all practicable expedition to the magistrate within whose jurisdiction the offence may occur. Act XIV. 1843, sect, 10.

Penalty for searching or apprehending without reasonable grounds.

3535. Provided always, that any officer of the customs department who shall without reasonable grounds of suspicion search any carriage or conveyance or any package, shall, upon conviction thereof before the magistrate within whose jurisdiction the offence may have been committed, be punished with fine not exceeding 250 rupees, which fine shall be paid over to the party aggrieved, and, on non-payment of such fine, with imprisonment not exceeding three months; and provided also, that any officer of the customs department who shall under color of this Act apprehend any person, without reasonable grounds of suspicion that such person is liable to punishment under this Act, shall upon conviction before the magistrate, within whose jurisdiction the offence may have been committed, be punished with fine not exceeding 500 rupees, which fine shall be paid over to the party aggrieved, and, on non-payment of such fine, with imprisonment not exceeding six months. Act XIV. 1843, sect. 11.

Offences cognizable by magistrate.

3536. All magistrates, or persons exercising the powers of magistrate, shall be competent to receive and determine all charges against persons thus made over to them for trial on account of offences against this Act; and all sentences passed in pursuance of this Act shall

be open to appeal under such rules as may from time to time be laid down for the cognizance of appeals in ordinary cases. Act XIV. 1843, sect. 12.

All police and other officers to assist customs officers.

3537. All officers of police, and all officers of the government engaged in the collection of the land revenue, are empowered and required to aid and assist the officer of the customs department in the execution of this Act. Act XIV. 1843, sect. 13.

Local limit of Act.

3538. Nothing in this Act contained is to apply or to be deemed to apply to the Saugor and Nerbudda territories, or to the district of Ajmere. Act XIV. 1843, sect. 14.

NOTE.

The following rules were issued for giving effect to the above provisions under Notifications Govt. *W. P.* February 10, 1844, and July 21, 1852.

SECTION I.

Customs Lines and Jurisdiction.

Rule 1. The lines hereinafter specified shall be established for levying the duties authorized by Act XIV. 1843.

Rule 2. The North-West frontier line shall commence in the Himalaya range of mountains on the Jumnah, and shall run in the direction of that river till it reaches the boundary between the Banda and Allahabad districts, whence it shall run in the direction of the Southern frontier of the Allahabad and Mirzapore districts till it meets the river Soane, and there it shall terminate.

Rule 3. Custom house jurisdiction shall extend, on the left bank of the Jumnah, from its entering British territory in the Himalayas to within two miles of the chief police station of Shamli, for a distance of five miles from the bank of the river; and, on the right bank of the Jumnah, from the point where it enters British territory in the Himalaya range to the boundary of the Banda and Allahabad districts, for a distance of 15 miles from the bank or over all British territory within that space; and along the frontier of the Allahabad and Mirzapore districts for the distance of 15 miles North and East of the frontier, save and except that the cities and marts of Delhi, Bindrabun, Muttra, and Agra, shall be excluded from customs jurisdiction, the space so excluded being a circle of two miles from the cotwali or chief police station of each town. Provided that where these tracts are so excluded, the breadth of the line be extended in a correspondent measure to the Westward and Southward, so that in no place the breadth be less than 15 miles, or include all British territory within that space.

Rule 4.. The Hurrianah line shall branch off from the North-Western frontier line at Bullubgurh, and skirting the Northern boundary of the Jhujjur territory shall pass by Hansi, Hissar, and Sirsa, and beyond that point till it reaches the extreme limits of the British territory at or near the Sutlej river; and along this line customs jurisdiction shall extend for a breadth of ten miles, or over all British territory within that space. All dutiable articles crossing the Hurrianah line shall pay the full duty; save and except that salt, intended for consumption to the West of the North-West frontier, shall only be liable to half duty on crossing this line. All imported articles which have paid full duty on crossing the Hurrianah line shall not be liable to any further duty on crossing the North-West frontier line; and exported articles, which have paid full duty on crossing the North-West frontier line, shall not be liable to any further duty on crossing the Hurrianah line.

Rule 5. Articles brought from the Southward and Westward within customs jurisdictions, upon either of the above lines, shall be held to be imported, save and except in the case of sugar, the produce of a British province, as provided hereafter in rule 37. Articles brought from the Northward and Eastward within customs jurisdiction upon any of the above lines shall be held to be exported.

Rule 6. A line, for the levy of a duty on salt only, shall proceed from the fortress of Allahabad, due South to the Rewah frontier, and due North to the Oude frontier, and thence along the Western and Eastern

boundaries of the Oude state, till it reaches the Nepal frontier, on either side, and there it will terminate. Customs jurisdiction shall extend East of the line running due South and North from Allahabad for a breadth of 10 miles, and, where the line skirts the Oude frontier, for a distance of 13 miles from that frontier.

Rule 7. All salt passing out of the Oude territory across this line shall be held to be imported, and shall be liable to the duty of two rupees per maund, and all salt passing to the Eastward of Allahabad shall be held liable to the further duty of one rupee per maund, imposed by section 2, Act XIV. 1843.

Rule 8. The said customs jurisdiction shall not include the Ganges or Jumnah river, so as in any way to interrupt the free navigation thereof, all customs interference with the river-borne trade being hereby prohibited, further than may be required at or near Allahabad for the protection of the special further duty on salt.

SECTION II.

Customs chokees open and closed.

Rule 9. Custom house chokees may be established at any points within customs jurisdiction for the regulation of the lawful traffic, and for the suppression of contraband traffic. The chokees shall be either open or closed, and shall be disposed in single continuous lines, at such intervals, as may be necessary. The open chokees shall be established on the chief roads intercepting each line for the passing of such dutiable articles as shall have paid the prescribed duty. The closed chokees shall be entirely of a preventive nature; and shall be established to prevent the importation of sugar from foreign territories, and the passing of dutiable articles, although accompanied by rowannahs.

Rule 10. A list of the open chokees for passing dutiable articles, within each custom house jurisdiction, shall be prepared and printed in the English, Persian, Nagree, and mahajunnee languages, and kept in a convenient place, for public reference, in each open chokee, and at the tuhseeldarees and thanas adjacent thereto, and in the offices of the collector and collector of customs of the district.

SECTION III.

Custom houses and custom house officers.

Rule 11. Custom houses for entering the exports and imports, and for receiving the duties authorized by the Act, shall be established at Sirsa, Hansi, Delhi, Kurnal, Hodul, Agra, Calpi, Rajpoor, Allahabad, and Mirzapoor.

Rule 12. The superior officers of the department charged with the collection of duties, granting of rowannahs, and superintending the preventive establishment, shall be denominated collectors, and deputy collectors; the deputy collectors shall be subordinate to the collectors, but shall be competent to perform all acts which may legally be performed by the collector. There shall be one commissioner in each division, vested with the general superintendence over the whole establishment; and there shall be in charge of each custom house a collector or deputy collector.

Rule 13. The subordinate officers who will constitute the preventive department shall be called patrols, assistant patrols, darogahs, jemadars, and chaprasis; and shall be stationed at such places along the line as may, from time to time, be found convenient. At all open chokees there shall be stationed a darogah, or jemadar, and a mohurir or weighman.

SECTION IV.

Mode of collecting the duty on dutiable articles when brought across the line.

Rule 14. No dutiable articles shall be brought across the line, unless covered by rowannahs, in duplicate, of the form [A] annexed to these rules.

Rule 15. Persons desirous to obtain such rowannahs for the passing of dutiable articles shall give in a written application at the nearest custom house. The application shall specify—

The name and description of the goods.
The description and quantity of carriage.
Total weight of goods.
Rate of duty per maund and total amount of duty.
The name of the applicant.
By what route or chokee proceeding.

Rule 16. A sufficient number of officers, called mooshriffs, shall be entertained at each custom house; and, on payment of the duty to the treasurer and application for the rowannah, it shall be the duty of one of these officers to see that the rowannah is duly and accurately prepared and delivered to the applicant, free of any further charge or fee whatever. Each rowannah shall bear the signature of the mooshriff by whom it has been prepared and delivered, and he shall be held responsible for its accuracy, and sufficiency, and early delivery.

Rule 17. Rowannahs shall be current for three months, from the date of issue, and shall be of no effect whatever from and after the expiration of that period, excepting in the manner provided hereafter in section V.

Rule 18. Rowannahs, granted at any custom house, shall cover dutiable articles in all customs jurisdiction, save and except that rowannahs certifying payment of the import duty on salt shall not exempt salt passing Eastward of Allahabad from payment of the further duty.

Rule 19. When dutiable articles covered by a duplicate rowannah are brought to an open chokee, the rowannah shall be delivered to the officer at the chokee; who, after comparing it with the goods, and ascertaining that it covers them, shall permit the goods to pass, at the same time dividing the two copies of the rowannah through the bordered words in the middle, himself retaining the right hand or duplicate, and delivering the original to the owner of the goods. The goods shall on no account be detained at the chokee more than twenty-four hours unless for breach of customs rules.

Rule 20. The single original rowannah, of the form A, shall be of no avail to cover dutiable articles, before they reach a line of chokees, and when brought to an open chokee, save and except in the case of dutiable articles intended to be brought across the frontier line North of Delhi, after having passed the Hurrianah line, or the reverse. In this case the single original rowannah shall be considered as proof of payment of duty on the line first crossed. Special rowannahs must be taken out from the Allahabad custom house, after payment of the further duty, to cover salt passing to the Eastward of that city.

Rule 21 Rowannahs destroyed by fire or water shall not be renewed or granted in duplicate, excepting by order of the collector of the division on proof of destruction in the manner aforesaid.

Rule 22. If the possessor of a rowannah be desirous to divide the despatch of goods covered by the rowannah, he shall, on application to the nearest custom house, obtain as many partitions of atrafee rowannahs, of the form B, as he may require, provided that a fee of two annas be paid on each partition rowannah so taken.

Rule 23. Persons wishing to export cotton, or to bring it within half a mile of the line of chokee, from the Northward and Eastward, shall make application to the collector of customs, and shall obtain from him a muafi rowannah, that is a free pass, in the form C annexed to these rules: no fee shall be demanded for the preparation of such rowannah, and it shall under no circumstances be current for more than one month from the date of issue.

Rule 24. Persons wishing to bring salt within the customs jurisdiction from the Northward and Eastward, shall obtain a muafi rowannah of similar form, on payment of a fee of two annas for each rowannah,

which rowannah shall be current for a period of 15 days from its issue, but shall not cover goods found at a greater distance than five miles from the Northern or Eastern limit of the jurisdiction.

Rule 25. The maund weight mentioned in the Act as that on which the duty is to be levied, is the maund prescribed by Reg. VII. 1833 (*i. e.* of 80 sicca weight to the seer.)

SECTION V.

Extending the currency of rowannahs.

Rule 26. Persons desirous to deposit or keep dutiable articles within the limits of customs jurisdictions for a period exceeding that for which the rowannahs may be current, may obtain an extension of their currency for a period not exceeding eight months, calculated from the date of original issue, provided they make application to the collector, or the patrol of the beat, one week before the expiration of the original term of the rowannah.

Rule 27. On such application being made, the patrol shall ascertain whether the despatch is covered by the rowannah; and, on being satisfied that such is the case, shall endorse the rowannah and note on its back the place of intended deposit and the period for which its extension is required.

Rule 28. The rowannah so endorsed shall be sent to the collector, who will superscribe thereon the period for which the rowannah is extended, and the date on which the superscription will cease to have effect.

Rule 29. The rowannah thus superscribed, signed and sealed by the collector and attested by the mooshriff, shall be delivered to the applicant, either at the custom house, or through the patrol of the beat, as may be desired by the applicant.

Rule 30. The rowannah, thus extended, shall cover the goods for the period noted in the superscription and no longer.

Rule 31. No extension shall be granted for a second period, beyond the full term of eight months from the date of original issue, excepting on clear grounds of necessity, in order to save the owners of the goods from unmerited loss; and then, only with the permission previously obtained of the collector of the division.

SECTION VI.

Illegal acts involving penalties.

Rule 32. The bringing or keeping of salt within customs jurisdiction, uncovered by a rowannah, shall subject the offenders to all the penalties prescribed by the Act.

Rule 33. The bringing of saccharine produce, sugar, or cleaned cotton, uncovered by a rowannah, within half a mile of the line of chokees established under rule 9 shall subject the offenders to all the penalties prescribed by the Act.

Rule 34. The attempt to bring dutiable articles, even when accompanied by a rowannah, across the line of chokees, except by a open chokee, shall subject the offenders to all the penalties prescribed by the Act.

Rule 35. Uncleaned cotton may be brought free of duty, and unaccompanied by a rowannah, to any mart South or West of the line of chokees or on the line of chokees; but the attempt to bring the cotton past the line, whether in a cleaned or uncleaned state, unless it be covered by a rowannah, shall subject the offenders to all the penalties prescribed by the Act.

Rule 36. Provided that persons having in their possession, uncovered by a rowannah, salt not exceeding one seer, or sugar or saccharine produce not exceeding five seers, and intended for private consumption, shall not be held liable to the penalties prescribed in the Act, and are hereby exempted therefrom. Salt not exceeding five seers uncovered by a rowannah found in the possession of a person

shall be liable to confiscation, but the possessor shall not be liable to the penalties prescribed by section 7, Act XIV. 1834.

Rule 37. Provided also that sugar, the produce of British territory, covered by a certificate of origin, prescribed by section 3, Act XXXII. 1836, if brought across the line from British territory, lying on the South and West of the line, shall not be held prohibited.

Rule 38. Dutiable articles brought to an open chokee shall be held to be covered by a rowannah in duplicate or single, as may be requisite under rule 20, if they agree with the description in the rowannah in all essential particulars, and if there be no greater excess of weight then five per cent. of the whole despatch, and if the rowannah shall be current, and shall not have been previously used for passing other goods.

Rule 39. If the excess in weight be more than five per cent. above what is entered in the rowannah, but not more than 15 per cent. of the whole despatch, or if the discrepancy between the goods and the rowannah be evidently the result of accident or ignorance, and there be no ground for suspecting fraud, a greater penalty than double duties on the whole despatch shall not be awarded by the commissioner.

Rule 40. Whenever persons shall have become liable to the penalties under the declaration in these rules, evidently from inadvertence or ignorance and without any attempt at concealment or fraud, a greater penalty than double duties on the whole despatch shall not be awarded by the commissioner.

CHAPTER X.

OF MILITARY STORES.

Arms and military stores not to be transported except under a pass.

3539. The transportation of cannon, and of all descriptions of fire-arms or military stores, excepting on account of or under a pass from the British government, being prohibited, all officers of the customs are required to seize all such cannon, arms, or military stores, as are attempted to be transported in disobedience of this prohibition. The cannon, arms, or stores, so seized, are liable to confiscation. This rule, however, is not to be considered as applicable to fowling pieces, pistols, swords, or any other arms, which are in the possession of individuals evidently for private use. Reg. IX. 1810, sect. 31.

Arms, ammunition, and military stores, not to be exported from Company's territories without a pass.

3540. Arms, ammunition, and military stores (with the exception of arms in the possession of individuals for private use) are not to be exported, or otherwise taken from the territories of the East India Company, without a license from a public officer or officers to be indicated by the government for the purpose of granting such licenses, and a full compliance with all such rules and conditions as may be prescribed for the guidance of such officer or officers, in regard to such exports, by the government. And any arms, ammunition, or military stores, which any person exports, or attempts to export, or take as aforesaid, contrary to this Act, are to become thereby forfeited, on the award of the officer or officers authorized as aforesaid to grant licenses, or the collector of customs; and every person offending in the premises contrary to this Act, is liable, on conviction before a magistrate, to a penalty not exceeding 500 rupees. Act XVIII. 1841, sect. 1.

Penalty for offending against this prohibition.

Magistrates W. P. to exercise powers under above provisions, reporting to government applications for licenses to export.

3541. The magistrates in the Western provinces are authorised to grant licenses for the exportation of arms, ammunition, and military stores, and to exercise the powers specified in Act XVIII. 1841. In ordinary cases the magistrate must report direct to the secretary to government in the judicial department the circumstances under which application is made to him for license for the export of arms, ammunition, or military stores; and shall await the orders of government before issuing such license. In cases of emergency, where the export may be apparently unobjectionable and the exporter would be exposed to inconvenience by the delay of a reference, the magistrate is empowered to grant the license without delay, at the same time reporting to the government the circumstances which induced him to grant it without previous reference. The license may be drawn out in any convenient form, but must sufficiently particularise the nature of the despatch which it covers. No fee can be demanded for the preparation or issue of the license. Notification Govt. *W. P.* March 30, 1850.

Penalty for keeping more than 50 pounds of gunpowder without license.

3542. Any person, who collects or keeps in one place, or within places not exceeding 3 miles in distance from each other, any quantity of gunpowder exceeding 50 pounds, without a license from such officer as aforesaid, is liable, on conviction before a magistrate, to a penalty not exceeding 500 rupees; and such gunpowder is to become forfeited on the award of the officer or officers authorized to grant licenses as aforesaid, or the collector of customs. Act XVIII. 1841, sect. 2.

Government may allow exportation of military stores.

3543. It is lawful for the government to allow at any port or ports the exportation of arms, ammunition, and military stores, as aforesaid, without any such license as aforesaid, as they deem expedient. Act XVIII. 1841, sect. 3.

Chief magistrate of Calcutta to grant licenses for exportation of military stores.

3544. The chief magistrate of Calcutta was appointed, under the above provisions, to be the officer for the presidency of Fort William, for the purpose of granting licenses for the exportation of arms, ammunition, or military stores, from Calcutta. It was not the intention of this appointment to preclude the collector of customs from allowing the exportation of arms, ammunition, or military stores, when accompanied by an order of government according to the practice heretofore in observance. Notification Govt. *Bengal*, February 9, 1842.

CHAPTER XI.

OF UNLAWFUL POSSESSION OF SOLDIERS' NECESSARIES, &c.

Penalty on purchasing soldiers' necessaries, clothes, &c.

3545. Any person, who shall knowingly detain, buy, exchange, or receive from any soldier or deserter, or any other person, on any pretence whatsoever, or shall solicit or entice any soldier, or shall be employed by any soldier, knowing him to be such, to sell any arms, ammunition, clothes, or military furniture, or any provisions, or any sheets, or other articles used in barracks, provided under barrack regulations, or regimental necessaries, or any article of forage provided for any horses or other beasts belonging to or used in the East India Company's service; or who shall have in his or her possession or keeping any such arms,

ammunition, clothes, furniture, provisions, spirits, articles, necessaries, or forage, as aforesaid, and shall not give a satisfactory account how he or she came by the same; or shall change the color of any clothes as aforesaid; shall forfeit for every such offence any sum not exceeding two hundred Company's rupees, together with the treble value of all or any of the several articles of which such offender shall so become possessed. And if any person, having been so convicted, shall afterwards be guilty of any such offence, and shall be convicted thereof by one or more justices of the peace, every such offender shall for every such offence forfeit any sum not exceeding two hundred Company's rupees but not less than fifty Company's rupees, and the treble value of all or any of the several articles of which such offender shall have so become possessed, and shall, in addition to such forfeiture, be liable to be imprisoned only, or imprisoned and kept to hard labor, for any term not exceeding six calendar months, as the convicting justice or justices shall think fit. And upon any information against any person for a second or any subsequent offence a copy of the conviction, certified by the proper officer having the care or custody of such conviction, or any copy of the same, proved to be a true copy, shall be sufficient evidence to prove a conviction of the former offence. And if any credible person shall prove on oath or solemn declaration before a justice of the peace, or person exercising the like authority, a reasonable cause to suspect that any person has in his or her possession, or on his or her premises, any property of the description herein-before described, with respect to which any such offence shall have been committed, the justice, or person exercising like authority, may grant a warrant to search for such property as in the case of stolen goods; and, if upon search any such property shall be found, the same shall and may be seized by the officer charged with the execution of such warrant, who shall bring the offender in whose possession the same shall be found before such justice or other person to be dealt with according to law. 12 and 13 Vict. cap. 43, sect. 52 (mutiny Act for military forces of the East India Company).

Second offence.

Warrant for search on suspicion.

Modo of recovering penalties.

3546. All penalties and forfeitures by this Act imposed may and shall be sued for and be recoverable in any court of record at the said presidencies, or in any other court in India, in which, under any laws made or to be made in India, the penalty would be recoverable, if the same had been incurred by the offender in breach of any other law: provided always, that no action shall be brought or prosecution carried on by virtue of this Act for any such penalties or forfeitures as aforesaid, unless the same be commenced within six months after the offence is committed. 12 and 13 Vict. cap. 43, sect. 68.

These provisions to be enforced by mofussil magistrates.

3547. Magistrates of the Company's criminal courts are bound to act under these provisions, and have power to enforce the penalties, although no Act of the local legislature has been passed for the promulgation of the Act of parliament. C. O. No. 50 of vol. 4. This circular was issued in accordance with the opinion of the advocate general, who referred to sect. 36 of 3 and 4 Vict. cap. 37, and held that its provisions were still in force, notwithstanding the promulgation of 12 and 13 Vict. cap. 43. But sect. 74 of the latter Act distinctly repeals the former, and the section above given supersedes the former provisions.

One moiety to informer; and remainder to military secretary to government.

3548. One moiety of any penalty, not including any treble value of any articles adjudged or recovered under the provisions of this Act, shall go to the person who shall inform or sue for the same; and the remainder of the penalty, together with the treble value of any article, or, where the offence shall be proved by the person who shall inform, the whole of the penalty, shall be paid to the military secretary of the Government of the presidency, to which the court by whom the penalty shall be adjudicated shall be subject; and the court which shall adjudge any penalty under this Act shall immediately report the same to the said secretary. 12 and 13 Vict. cap. 43, sect. 69.

Punishment for giving false testimony.

3549. In all cases where any oath is hereby required to be taken, or any person is hereby required to be sworn, a solemn declaration or affirmation may be substituted, if by the laws for the time being in force in India such declaration or affirmation would be allowed to be substituted in the place of an oath in case the party were about to depose as a witness in a civil action in any of the supreme courts of the presidencies. And any persons wilfully and knowingly giving false testimony on oath, or solemn declaration or affirmation, in any case wherein such oath or solemn declaration or affirmation shall have been made for the purpose of this Act, shall be deemed guilty of wilful and corrupt perjury, and being thereof duly convicted shall be liable to such pains and penalties as by any law in force in England, or by any law in force in India, any persons convicted of wilful and corrupt perjury are subject and liable to; and every commissioned officer convicted before a general court martial of perjury shall be cashiered; and every soldier or other person amenable to the provisions of this Act found guilty thereof shall be punished at the discretion of a general or other court martial. 12 and 13 Vict. cap. 43, sect. 70.

BOOK V.

OF OFFENCES AGAINST THE PERSON, OR THE PUBLIC PEACE

CHAPTER I.

OF PERSONS OF BAD CHARACTER.

SECTION I.

OF NOTORIOUS OFFENDERS.

Police officers to apprehend all notorious robbers, and receivers.

3550. It is the duty of the darogahs of police to apprehend and forward to the magistrate all persons residing within their respective jurisdictions, who are notorious as dacoits and robbers of any denomination, or as house-breakers, thieves, or receivers of stolen property. Reg. XX. 1817, sect. 20, cl. 1.

On receiving credible information of any such person, the darogah is to make a secret and summary inquiry; and if necessary to apprehend him;

3551. On any written charge being preferred to a police darogah against individuals within his jurisdiction, of their being notorious robbers, burglars, thieves, or receivers of stolen property; or on the darogah's receiving credible information of such person being within his jurisdiction; the darogah, or other police officer presiding in the thana jurisdiction, is, previously to the apprehension of the accused, to make such secret and summary inquiry in the neighbourhood as is practicable, without endangering his escape, in regard to his general character and means of subsistence; and, if there appear substantial grounds to believe that the charge or information is well founded, the darogah or other police officer is to apprehend the person suspected, and is to examine him without oath regarding his name, connections, place of residence, occupation, and means of livelihood. If on such examination, and any further immediate enquiry which is practicable, there appear to be strong grounds for presumption, that the charge or information against the prisoners is unfounded or greatly exaggerated, and the prisoner tenders sufficient bail for his appearance before the magistrate, such bail is to be accepted; or in failure thereof, as well as in all cases wherein the examination of the prisoner tends to confirm the truth of the charge or information against him, he is to be forwarded under custody to the magistrate, together with a written report of the enquiry, including such particulars as are necessary to enable the magistrate to form a just comprehension of the merits of the case. Reg. XX. 1817, sect. 20, cl. 2.

and, as he accounts for himself, to discharge him on bail or to forward him to the magistrate;

but the police officers cannot hold sooruthals in such cases.

3552. The foregoing rule is not to be construed as authorizing the police officers to make the sooruthals and enquiries regarding character provided for in the next clause, except under the special orders of the magistrate. Reg. XX. 1817, sect. 20, cl. 3.

Magistrate to order enquiry without delay and to admit prisoner to bail.

3553. Whenever persons are apprehended on suspicion of bad livelihood, or information of notorious character only, the magistrate is, with the least possible delay, to make such enquiry as appears necessary to ascertain the grounds and truth of such suspicion or information; and if the party suspected, or informed against, is able to give sufficient bail for his appearance during the magistrate's enquiry, he is to be admitted to bail accordingly. C. O. No. 81 of vol. 1.

Police officers how to proceed when ordered to make local enquiry.

3554. Whenever a police officer receives instructions from a magistrate to make a local inquiry and sooruthal, for the purpose of ascertaining the character of any person of bad fame or suspicious livelihood, the darogah is to proceed himself, or is to depute the mohurir or jemadar of the thana, to the village, in which the suspected person has been known to reside; and the darogah, mohurir, or jemadar, when not otherwise specially instructed by the magistrate, is to summon four or more of the principal inhabitants (not being females) or of the middling classes residing in the village, and is to question them without oath respecting the present and former place of residence of the prisoner, his general character, means of subsistence, property in ploughs, land, cattle, and other goods and chattels; he is also to require them to state whether the individual suspected associates with persons of bad character, robbers, or armed men; and, if so, the names of such persons; whether he is frequently absent from his house or place of residence at night, without sufficient cause; whether his expenses are in proportion to or exceed his means; whether any person in the village bears the prisoner enmity; and whether the prisoner was ever before apprehended; and, if so, on what account. Reg. XX. 1817, sect. 20, cl. 4.

The sooruthal if favorable is alone to be forwarded; if unfavorable, witnesses are to be bound over to appear.

3555. The sooruthal, containing the result of the enquiry above directed, is to be signed by the persons assembled; and, if the result of the enquiry is favourable to the character of the prisoner, the darogah is only to forward his report, and to await the orders of the magistrate; but, if unfavourable, a sufficient number of the subscribing witnesses, not in any case exceeding four unless under the special orders of the magistrate, are to be immediately required to execute recognizances to appear and give evidence in the foujdaree court. Reg. XX. 1817, sect. 20, cl. 5.

Persons of bad character, liberated from custody or discharged from jail, are to be released in the presence of the headmen and watchmen of the village, who are to be enjoined under a penalty to keep a vigilant inspection over their conduct and mode of living.

3556. Whenever a person of bad character is liberated from custody, or is released from jail after the expiration of a specific sentence of imprisonment, and the magistrate is of opinion, with reference to the character of the prisoner, that his future conduct should be watched, such individual is to be sent to the thana division, in which his habitation is situated, and is to be released by the officers of the police in the presence of the munduls, patwaris, and other headmen and watchmen of the village to which the person liberated belongs, who are to be enjoined to afford him all practicable aid in procuring an honest livelihood; but at the same time to keep a vigilant inspection over his conduct and mode of living; and to give timely information to the police officers of the jurisdiction, in the event of his being absent from his village at night without giving notice of his intention;

or of his associating with individuals of bad reputation; or of his ceasing to labor or to obtain a livelihood by creditable means; in all which cases they are to be held responsible, and liable to the penalty stated in the next clause, unless they give due information of the circumstances to the thana. Reg. XX. 1817, sect. 20, cl. 6.

Names of the headmen before whom they are released to be reported to magistrate.

3557. On the occasion of releasing a prisoner, under the provisions of the foregoing rules, the police darogah is to report to the magistrate the names of the munduls and other headmen of the village present at the time of the prisoner's discharge; and, if the person released be hereafter convicted of any criminal offence, and it be established that the headmen of the place neglected to furnish the information required by the preceding clause, they are to be liable to the payment of a fine not exceeding 100 rupees from each individual, commutable in default of payment to one month's confinement in the civil jail. Reg. XX. 1817, sect. 20, cl. 7.

Specification of penalty for not giving required information.

Persons suspected of being engaged in a combination for robbery and murder to be made over to thuggee officers.

3558. Persons accused of robbery and murder, or of either of those crimes, under circumstances justifying a suspicion that the crimes have been perpetrated by persons engaged in a systematic combination for such purposes, are to be made over for trial to the officers of the thuggee department. C. O. No. 92 of vol. 3. *L. P.*

SECTION II.

OF SECURITY FOR GOOD BEHAVIOUR.

Magistrate to confine in default of security for one year.

3559. Whenever the magistrates, under the authority vested in them by the existing regulations, require security for the good behaviour of a prisoner, they are (in all cases in which they judge it safe to do so) to provide in their order for the release of the prisoner at the end of a definite period not exceeding 12 months. Reg. VIII. 1818, sect. 8, cl. 1.

Sureties to be responsible for same period.

3560. The period to be fixed for the responsibility of the sureties, in such cases, is to correspond with the term limited by the magistrate's order for the prisoner's detention in the event of his not furnishing the required security. Reg. IV. 1825, sect. 5.

Session judge need not revise such cases except on appeal:

3561. It is not necessary for the session judge to revise the proceedings of the magistrate in such cases, except on petitions [of appeal] presented by the prisoners; when he is directed and empowered to call for the proceedings, and on his own authority to annul, modify, or confirm, the orders of the magistrate.(*a*) Reg. VIII. 1818, sect. 8, cl. 2.

and cannot enhance the sentence:

3562. When a case is brought before a judge by petition from a security prisoner, there is no discretion to enhance the period of detention. Const. No. 347.

he may always examine proceedings; but cannot revise except on appeal.

3563. The above provision is not to be construed into a prohibition to the judge to call for the proceedings, when no petition is presented to him: but he cannot revise such cases, except on appeal by the parties. Const. No. 460. C. O. No. 113 of vol. 3. See also paras. 1849, and 1855.

(*a*) It is to be remembered that Act XXXI. 1841 has repealed those parts of the Bengal code, which concern the powers and duties of the criminal courts in respect to appeals and revision of sentences of a lower court by a higher. The existing rules, therefore, regarding appeals and revision of sentences apply to cases of this nature; and consequently a prisoner, required to give security for good behaviour, must present his petition of appeal within one month from the date of the magistrate's order.

If magistrate thinks that the prisoner ought not to be released at the end of one year, he is to specify the amount of security, the number of sureties, and the period of their responsibility, required;

3564. In all other cases, in which the magistrate is of opinion, from the evidence to general character adduced before him, that the prisoner is by habit a robber, burglar, or thief, or a vender or receiver of stolen property knowing the same to have been stolen, of a character so desperate, dangerous, or irreclaimable, as to render his release without security, at the expiration of the limited period of 12 months above specified, hazardous to the community, the magistrate is to record his opinion to that effect with an order specifying the amount of security which should, in his judgment, be required from the prisoner, as well as the number of sureties, and the period for which the sureties should be responsible for the prisoner's good behaviour. Reg. VIII. 1818, sect. 9, cl. 1.

and to lay the proceedings before the session judge, who is to confirm or modify such order.

3565. The whole of the proceedings are then to be laid before the session judge, who, after examining them, and requiring any further evidence, which he judges necessary, is competent, from his own authority, to pass orders on the case, either confirming, modifying, or annulling the orders of the magistrate, as he judges proper and equitable. Reg. VIII. 1818, sect. 9, cl. 2.

But in such cases the magistrate is to pass no sentence, but simply to refer the case.

3566. In such cases the magistrate should not sentence to the portion of time, which is within his competence, and seek the orders of the session judge for an addition; but should send up the case at once to the sessions, with his opinion why the orders of the sessions court are required. When the magistrate passed sentence for one year, and referred the case for two additional years, and the judge passed an order in accordance with the opinion of the magistrate, the court allowed the former order to stand, but reversed the latter as illegal. Reports *L. P.* 1856, part 2, pages 157 and 159.

The above applies whenever magistrate requires security for more than one year.

3567. Under the above provision the proceedings in all cases of prisoners in confinement under requisition of security by a magistrate for their good behaviour, for any period exceeding 12 months, must be laid before the session judge. Const. No. 517.

Commitment cannot be on such charge.

3568. A commitment cannot be made on a charge of being a bad character. N. A. R. vol. 6, page 76.

Judge to fix period of detention, in default of security, not exceeding 3 years.

3569. In all such cases, if the session judge does not think it safe to direct the immediate discharge of the prisoner, he is to fix a limited period for the provisional detention of the prisoner, in the event of his not giving the security required from him; which period is never to exceed 3 years, except in the cases specified in the following section. Reg. VIII. 1818, sect. 9, cl. 3.

If the magistrate wishes to take security for more than one year, he must pass such order in the first instance.

3570. When a magistrate has sentenced a person to imprisonment in default of security, without providing that the case should be submitted to the session judge for sanction to his detention beyond one year, it is not competent to the judge to enhance the original sentence on the subsequent proposition of the magistrate. N. A. R. vol. 6, page 76.

Session judge may order a prisoner to be con-

3571. In cases in which the session judge,(*a*) from the proceedings before him, considers the prisoner to be a notorious gang-robber (dacoit), or other notorious robber of whatever

(*a*) The original text vests these powers in the judge of circuit. Constructions Nos. 771 and 823 declare that the session judge is equally competent to exercise them. The sudder court will also enforce these provisions if there is sufficient evidence on the record. Reports *L. P.* 1856, part 1, page 910.

fined indefinitely in default of security;

denomination, being of desperate or dangerous character, whom it would be unsafe to set at liberty without substantial security for his future good behaviour, and who, therefore, in default of giving such security, should be confined indefinitely, in pursuance of sect. 9, Reg. VIII. 1808 [*i. e.* until the required security is given to the satisfaction of the sessions court, upon the report of the magistrate, unless from the prisoner's behaviour during his confinement, or other circumstances, there appears to be sufficient ground of assurance to warrant his discharge on a mochulka under the provision made for that purpose by sect. 11, Reg. LIII. 1803], he is to declare and order the same accordingly. Reg. VIII. 1818, sect. 10, cl. 1. Reg. III. 1819, sect. 2.

but such cases are always to be revised by the session judge at the end of 3 years.

3572. In these cases, however, the session judge is nevertheless to fix the amount of the security to be required from the prisoner, and is to provide in his order that, if the prisoner is not able to furnish the security required within the period of 3 years from the date of such order, the prisoner in question is to be again brought up, on the expiration of the period of 3 years above specified, before the session judge; whose duty it will be, after examining the proceedings and making any further enquiries he may judge necessary, to determine whether the prisoner shall then be released, or whether he shall be again remanded, either on the same terms as before, or on any modified terms favorable to the prisoner. Reg. VIII. 1818, sect. 10, cl. 2.

In such cases the period of responsibility of sureties is to be confined to 3 years; but they are to deliver up the individual at the end of that period;

3573. With a view to encourage respectable individuals to become sureties for prisoners of the description alluded to in the foregoing clauses of this section, the period for which the sureties are to be responsible for the good behaviour of the individuals is, in all cases, to be limited to 3 years, subject however to the condition that the sureties, at the expiration of that period, are to be bound to deliver up the individuals to the magistrate. Reg. VIII. 1818, sect. 10, cl. 3.

and then, if they are willing, to renew their responsibility;

3574. When individuals are surrendered by their sureties under the foregoing rule, the magistrate is to ascertain whether the former surety is willing again to become responsible for the future good behaviour of the prisoner, for a further period not exceeding 3 years; and in the event of the surety being willing to become again responsible for the conduct of the prisoner, the magistrate is to accept the security, and to release the prisoner on the same terms as before. Reg. VIII. 1818, sect. 10, cl. 4.

if unwilling, the individual is to be brought before the session judge.

3575. If the former surety declines to become again responsible for the prisoner, and the prisoner is unable to furnish any other sufficient security, the magistrate is to detain him in custody, and to cause him to be brought before the session judge for such further orders as he considers it proper to pass in the case. Reg. VIII. 1818, sect. 10, cl. 5.

No person is to be required to give security solely on suspicion of having committed a particular offence;

3576. The criminal courts are prohibited from requiring security for good behaviour from persons charged with, but not convicted of, a specific offence, on the grounds of strong suspicion of their having committed such offence, independently of any proof of notorious bad character. Reg. VIII. 1818, sect. 2, cl. 1.

however strong the presumption may be.

3577. The court held that a magistrate was not justified in demanding security from prisoners merely on the ground of their undoubted participation in a dacoity. If there is

proof of such participation, they should be committed ; if not, the bare suspicion of it would not warrant the demand of security. Reports *L. P.* 1855, part 2, page 852.

But it may be required from an acquitted prisoner, if he is proved to be of notoriously bad character.

3578. The foregoing rule is not to be construed to prevent the session judges, or the nizamut adawlut, from requiring security from prisoners, who are acquitted on the trial before those courts of the specific charge brought against them, provided such prisoners appear, from the evidence on the proceedings, to be of notoriously bad or dangerous character. In cases of this description, the session judges, or the nizamut adawlut, are to issue such orders as they judge necessary under the rules contained in sections 9 and 10 of this regulation. Reg. VIII. 1818, sect. 2, cl. 2.

These provisions are applicable only to habitual thieves or receivers :

3579. When the session judge acquitted a prisoner on the charge of forgery, but required from him security for good conduct on the ground that the evidence on the trial proved him to be a known bad character ; the court held that the provisions of Reg. VIII. 1818 are applicable to such persons only as are shown to be habitual participators in robbery or theft or the sale or receipt of stolen property. Reports *L. P.* 1854, part 1, page 311.

and cannot even be applied to the formers of gangs of dacoits.

3580. A session judge required security from a prisoner, whom he acquitted of dacoity, as a dangerous character and notorious former of gangs of dacoits, being in the habit of getting men to commit dacoities with the intention of informing against them. The court held that this did not amount to proof of notoriously bad or dangerous character within the meaning of the regulation, and cancelled the order requiring security, informing the judge that he could of course direct further enquiry to be made by the magistrate in respect to the prisoner's general character and means of livelihood ; and pass such fresh order as he might deem just and proper upon consideration of the evidence which might be recorded by the magistrate. N. A. R. vol. 6, page 262.

The judge must give the accused opportunity to call evidence in his defence.

3581. When a session judge thinks it proper to act under the preceding clause, he ought to give prisoners the opportunity of summoning the witnesses, whom they may desire to have heard on the subject of their character and livelihood ; and ought not to pass orders till after full consideration of the statements of such witnesses. And it is not enough to record that there is sufficient evidence of bad character on the proceedings ; but the particular statements or parts of the evidence, from which this conclusion is drawn, ought to be distinctly referred to in the session judge's order. N. A. R. vol. 6, page 154.

Session judge may originate investigation into character.

3582. The session judge is competent to direct an investigation to be made into the character of a prisoner, acquitted of the specific charge on which he has been tried, as a preliminary to the call for security. Const. No. 1180.

Security cannot be required in addition to a specific sentence of punishment.

3583. It is not competent to a magistrate, or to a court of sessions, to add a demand of security to a specific sentence passed on a prisoner by themselves ; nor can the session judge require security from a prisoner, to whom a specific punishment has been adjudged on a regular trial by a magistrate. C. O. No. 250 of vol. 1. Const. No. 1195.

Magistrate how to proceed if he wishes to detain on

3584. Whenever a magistrate or joint magistrate sees grounds for detaining in confinement, under requisition of security for good behaviour, a prisoner acquitted and ordered to be

security persons acquitted at the sessions.

discharged by a court of sessions, he is required immediately to certify the same, together with a copy of his proceedings, for the information of the session judge. C. O. No. 201 of vol. 1.

The magistrate may always exercise his discretion in such cases.

3585. A session judge proposed to interdict the magistrate from enquiring into the characters of persons acquitted at the sessions, except upon new grounds totally irrespective of those on which they had been committed to the sessions. But the court held that it was not competent to them to issue any such general restrictive directions. A magistrate must be allowed to act on the discretion vested in him by the law; and control over his orders in regard to security, which must be issued upon further evidence than is before the session judge on a trial, can be exercised by the session court only when they are appealed against. It is for prisoners to appeal against the orders for their detention on security in regular course. In such cases the prisoners must be allowed the option of giving bail pending the enquiries into their means of livelihood and character; but a magistrate may always, and might often with great propriety, send a prisoner, unable to give bail, under a guard to be present at the enquiry in the mofussil, and to suggest evidence to be summoned on his own part. Letter N. A. No. 632, July 8, 1851.

Security is not to be required without proof of recent bad livelihood.

3586. The confinement of an individual in jail, on a requisition of security for good conduct, without proof of recent circumstances warranting the imputation of dishonest livelihood at the time of apprehension, is a manifest act of injustice. The session judge is particularly required to report any deviation from these orders. C. O. Nos. 9 and 26 of vol. 2.

Previous convictions no cause for requiring security.

3587. As a general rule previous convictions should not be considered in judging of a person's character. C. O. Sup. Pol. *L. P.* No. 5 of 1847.

What particulars are to be fixed in the order requiring security.

3588. In every instance, in which security for good behaviour is required, whether by the magistrates, the courts of sessions, or the nizamut adawlut, the amount of the security, the number of sureties (to be fixed at the discretion of the magistrate or of the court requiring the security), and the period of time for which the sureties are to be responsible for the good conduct of the prisoner, are to be fixed and determined. Reg. VIII. 1818, sect. 3.

Period of detention in default of security to be specifically fixed.

3589. The period of time, during which such prisoners may be made liable to detention in custody, on failure to furnish the security required from them, is to be specifically fixed in every instance, except in those cases, in which the prisoner appears to be a notorious robber, of a character so dangerous as to render his release, without security, evidently unsafe and objectionable. Reg. VIII. 1818, sect. 4.

Magistrate to use caution and discretion in requiring security.

3590. Adverting to the large number of persons detained by a magistrate merely on suspicion of being bad characters, without any direct evidence to the fact, and in some cases merely because they had been before apprehended or convicted of specific offences, the nizamut adawlut required magistrates to exercise the powers vested in them by the above provisions with due caution and discretion. C. O. No. 245 of vol. 1.

Rule for fixing amount of security.

3591. Magistrates are to limit their requisitions of security for good behaviour to such sums, as it may appear equitable to recover in the event of the conditions of the engagement

sureties to be responsible persons.

not being performed; and they are to be careful in ascertaining, that the sureties accepted are sufficiently responsible to make good the amount eventually demandable from them. C. O. No. 70 of vol. 1.

Sureties not to be rejected on account of distant residence.

3592. Distance, or residence in another district, forms no ground for the rejection of the security of a person tendered by a prisoner under orders to give security for good conduct. Const. No. 920.

Penalty to be enforced whenever the conditions of the security bond are not fulfilled.

3593. To put a stop to the practice of persons, for a pecuniary consideration, making themselves answerable for the conduct of men of bad character, over whom they have no influence, in the expectation that whatever may be the future conduct of those for whom they are responsible, their security will be regarded as nominal and not put into execution, —it is directed that whenever a person, who has given security for his good behaviour, is convicted of a serious criminal offence, and has not been delivered up by his surety, the latter is to be called upon to show cause why the penalty, to which he is liable by his engagement, should not be enforced; and that, unless satisfactory reason is assigned against enforcing the security bond, in whole or in part, it is to be enforced by the magistrate. Magistrates are to make known the above rule to all persons, who offer themselves as sureties for the conduct and appearance of men of suspicious character in their respective jurisdictions. C. O. No. 70 of vol. 1. Const. No. 734.

Penalty of bond how to be enforced.

3594. All muchalkas and security-bonds, which by force of any Act or regulation may be taken by criminal courts of the East India Company, or by magistrates or joint-magistrates, for keeping the peace or for good behaviour, may be enforced in the manner prescribed by sections 8 and 9 of this Act (*See paras.* 3847 and 3848). Act V. 1848, sect. 11.

Sureties how to obtain release from responsibility. Penalty not to be enforced if they give timely information.

3595. Individuals, who become sureties for the good behaviour of prisoners, may at all times obtain a discharge from their future responsibility by delivering up, or causing to be delivered up, the persons for whom they have become responsible to the proper magistrate or police officer: and they are not to be made responsible for the amount of the security-bond, in cases in which they give timely information to the magistrate, that the individuals, for whom they have become sureties, have taken to bad courses, and use every exertion in their power to the satisfaction of the magistrate for the apprehension and surrender of such individuals. Reg. VIII. 1818, sect. 7.

If surety dies, how far his heirs and executors are responsible.

Security-bond to be prepared accordingly.

How the heirs may obtain release from responsibility.

In such cases magistrate may remit the penalty in whole or in part.

3596. In cases wherein it is necessary to enforce a penalty-bond entered into by a surety for good behaviour, and it appears that the surety is dead, the magistrate, in enforcing the engagement as directed above, is to proceed against the heirs and executors of the surety to the extent of any property belonging to the deceased, which has come to their hands. Under this rule, the magistrate should be careful that the penal engagement, entered into by a surety, specifies the responsibility, to which his heirs and executors are liable in the event of his demise. But in all cases when the surety dies, his representative has the option of obtaining a discharge by delivering up the party engaged for, as provided above with respect to the surety himself. In carrying the above instructions into effect, when he does not receive any special orders from the session judge or the nizamut adawlut, the magistrate is

authorized to exercise his discretion in not enforcing the penalty, either wholly or partially, when the circumstances of the case appear to call for indulgence, or any equitable reason exists for dispensing with the penalty. C. O. No. 74 of vol. 1.

Magistrate may release persons confined by magistrate in default of security;

3597. The magistrates are empowered at all times to exercise their discretion in releasing, without reference to any other authority, prisoners confined under requisition of security for their good behaviour, whether by their own orders, or by those of any other person discharging the functions of a magistrate; provided the magistrates are of opinion, from whatever cause, that such prisoners can be released without hazard to the community. Reg. VIII: 1818, sect. 5, cl. 1.

but he is to report the case, if security has been required by a higher court.

3598. In cases in which a magistrate is of opinion, for whatever reason, that any prisoner confined under requisition of security for good behaviour, by order of the sessions court or nizamut adawlut, can be safely released without such security, the magistrate is to make an immediate report of the case, with his sentiments, for the orders of the court, which has required the prisoner to furnish security previously to his release. Reg. VIII. 1818, sect. 5, cl. 2.

Judge how to proceed on receiving such report.

3599. In all cases of such reports being made by the magistrate to the sessions court, the judge is to call the prisoner before him, and to examine the proceedings held upon his trial, as far as is necessary to ascertain the grounds on which the prisoner was required to find security; after which, and duly considering the circumstances stated in the magistrate's report, if he concurs with the latter in opinion that the prisoner ought to be released on his muchalka without security, he is to direct the same accordingly. Reg. LIII. 1803, sect. 11, cl. 2.

Circumstances to be considered by magistrate and judge in the exercise of such discretion.

3600. In the exercise of this discretion, the magistrates and session judges are of course to give due consideration to the general character of the prisoner as far as ascertainable, and the consequent risk to be apprehended from his being released without security for his future good conduct. Reg. LIII. 1803, sect. 11, cl. 3.

Mode of report to be made by magistrate in such cases.

3601. In making such reports the magistrate is to specify—

1. the name and designation of the prisoner;
2. the sessions at which he was brought to trial;
3. his number in the calendar;
4. the crime with which he was charged;
5. the date of the warrant or order requiring him to give security;
6. the ground on which the magistrate proposes his discharge without security on the execution of a muchalka.

C. O. No. 100 of vol. 1.

Assistant, vested with special powers, is not competent to require security for good behaviour.

3602. An assistant, vested with the special powers described in sect. 2, Reg. III. 1821, is not competent to require security for good behaviour from a prisoner sent in by a darogah under sect. 20, Reg. XX. 1817, or to commence an enquiry into the character of a prisoner made over to him for trial on a specific charge. Should he, in any trial referred to him by the magistrate, conceive it advisable to require security from a prisoner, not convicted of the crime charged, he must report to the magistrate to that effect. Const. No. 548.

SECTION III.

OF VAGRANTS AND SUSPECTED PERSONS.

Police darogahs to apprehend vagrants and suspicious persons.

3603. It is the duty of the darogahs of police to apprehend all vagrants and suspicious persons, of whatever denomination, wandering about the country in parties, or lurking about individually, without any fixed place of abode; or who, though resident in a particular place, have no ostensible means of honest livelihood, and who, on examination, are unable to give a satisfactory account of themselves. Reg. XX. 1817, sect. 20, cl. 8.

Police officers how to proceed on receiving information of the resort of such persons.

3604. Police darogahs, receiving information of the resort of such persons, are, previous to their apprehension, to make such summary inquiry as the nature of the case admits without risk to their escape; and, in the event of strong suspicion attaching to them, are to secure their persons; and, unless on examination without oath respecting their names, connections, place of residence, occupation, and means of livelihood, they can render a satisfactory account of themselves, are to forward them forthwith to the magistrate, together with a report of the circumstances, under which they have been arrested, and of the inquiry made. Reg. XX. 1817, sect. 20, cl. 9.

How to act if their names are unknown; or if they are in sufficient force to resist the police.

3605. In cases where the names of the vagrants or other suspicious persons cannot be ascertained, it is competent to the police darogah to apprehend such persons without a specific warrant; and, in the event of any number of persons of this description being in sufficient force to resist the officers of the thana, the darogah is to require the aid of the local zumeendar, or other landholder or farmer, or of the police officers of the adjacent thana, or is to apply for assistance from the sudder station, according to the exigency of the case. Reg. XX. 1817, sect. 20, cl. 10.

Darogah may admit such persons to bail.

3606. After the apprehension and examination of the persons suspected, should the information, upon which the darogah acted, prove to be incorrect, and no sufficient reason appear for sending them to the magistrate, the darogah is to admit the parties to bail, if they are able to furnish sufficient security; and is to report the circumstances to the magistrate, without sending them to the sudder station, till the receipt of an order to that effect. Reg. XX. 1817, sect. 20, cl. 11.

What order the magistrate is to pass in such cases.

3607. The magistrate is to examine on oath such vagrants or suspected persons, and also any persons who have a knowledge of their usual place of residence, occupation, or mode of obtaining their livelihood; and, if there appears to him ground for supposing that they are disorderly or ill-disposed people, he is to employ them in repairing the public roads, or upon any other public work, until they find a security for their good behaviour in case of their being discharged; or until some creditable persons agree to entertain them in their service; or the magistrate is satisfied from their deportment whilst in his custody, or other circumstances, that they will, of themselves, take to some service or employment so as to obtain an honest livelihood; in either of which cases he is to discharge them.* If any person so apprehended makes his escape from the custody of the magistrate before he is

* *Under sect. 8, Reg. VIII. 1818 the period of imprisonment in default of security must be limited.*

Punishment of such persons escaping from jail.

regularly discharged, and is re-apprehended, he is to be imprisoned and kept to hard labor for 6 months. *Beng.* Reg. XXII. 1793, sect. 10. *Ben.* Reg. XVII. 1795, sect. 10. *Ced. Prov.* Reg. XXXV. 1803, sect. 10.

3608. Magistrate should carefully look out for vagrants and pseudo-mendicants who proceed periodically from their homes ostensibly engaged in begging, snake catching, or juggling, but who are in fact systematic thieves. The nizamut adawlut have held that the penal provisions of sect. 10, Reg. XXII. 1793 are still in force, and authorize magistrates to demand security for good behaviour from such persons; while cl. 1, sect. 8, Reg. VIII. 1818 empowers those officers to detain them if security be not furnished. C. O. Sup. Pol. *L. P.* No. 14 of 1844.

Banishment of vagrants from the city or district is illegal; but they may be released on their voluntary offer to quit the jurisdiction.

3609. The practice of sentencing vagrants, and persons convicted of specific sentences, to banishment from the city or district, in which they were apprehended, and even to expulsion from the British territories, is wholly unwarranted by the regulations in force. This is not meant to prohibit the discharge from custody of a vagrant, or other person, not being a fixed inhabitant of a particular city or district, who has been apprehended under any circumstances of suspicion, and is not able to find security for his good behaviour, on his voluntary offer or consent to quit the jurisdiction, in which he was taken into custody. Such a measure, however, should, for obvious reasons, be adopted with circumspection, lest persons of bad character, released without security in one zillah, are left at liberty to commit acts of criminality in another jurisdiction. C. O. No. 159 of vol. 1.

Rules for preventing the subjects of foreign states from assembling in the British territories to commit robberies.

3610. Whereas persons being the subjects of foreign states, and assuming the fictitious characters of rajahs or of natives of distinction, or of pilgrims,(*a*) have frequently entered into the British territories, or have assembled together in armed bodies, for the purpose of committing robberies or other crimes within those territories, the following rules have been enacted with a view to prevent the recurrence of those practices. Reg. III. 1821, sect. 7, cl. 1.

Darogahs may detain such persons and report or forward them to the magistrate.

3611. In addition to the powers vested in darogahs of police, by sect. 20, Reg. XX. 1817, with regard to the apprehension of all vagrants and suspicious persons, they are empowered to detain all persons travelling in bodies through their jurisdictions, or assembling therein under circumstances leading to the suspicion that they have assumed a fictitious character, and that they are in reality persons of the description mentioned in the preceding clause(*b*); and unless, on examination, they are able to give a satisfactory account of themselves, the darogahs are, without delay, either to report to the magistrate the

(*a*) It would appear that the immediate cause of the enactment of these provisions was the incursion of a gang of shaghalkhors, composed of 163 persons, disguised as ordinary attendants of their principal chief Mihirban, who passed through the country under the assumed character of a rajah on pilgrimage, and, after a march of four months, and at a distance of many hundred miles from their home in the northern part of Oude, effected a most atrocious robbery upon a boat laden with treasure, and carried off 20,000 dollars and 2600 rupees. Their trial is reported in N. A. R. vol. 2, page 125. See extract judicial letter from the court of directors to the Bengal government, dated April 11, 1826, in "Selection of papers from the records at the East India House," vol. 4, page 15.

(*b*) The principal persons residing in villages, and village guards of every description, are required to give information of the resort to, or passage through, or assembling within, their villages of such persons under certain penalties. See para. 2414.

circumstances under which they have been detained, or in cases of an emergent nature are to forward such individuals to the magistrate. Reg. III. 1821, sect. 7, cl. 2.

Darogah how to proceed, if he does not think it necessary to detain them, or to forward them to the magistrate.

3612. If a darogah of police, acting under the discretion vested in him by the preceding clause, does not see sufficient cause, after the examination of the persons suspected, to send them to the magistrate, or to detain them until the orders of the magistrate are received, but nevertheless entertains suspicions of their real character and intentions, he is to depute one or more police officers to watch their proceedings in passing through his jurisdiction, and is to notify the same to the adjoining police division in order that the same precautions may be adopted and followed up. Reg. III. 1821, sect. 7, cl. 3.

Magistrate how to proceed, if the darogah forwards such persons to him.

3613. If a darogah of police forwards to the magistrate any persons travelling through, or assembling in, his division under suspicious circumstances, the magistrate, having duly enquired into the grounds of their arrest, is either to release them; or to adopt the precautionary measures directed in the preceding clause; or, if they appear to be travelling without any reasonable object, and to be inhabitants of a remote district, or subjects of a foreign state, he is to compel them to return, under a suitable guard, from station to station, to the district or territory from which they appear to have proceeded. Reg. III. 1821, sect. 7, cl. 4.

Darogahs are not to confound with such persons strangers coming for the purpose of cultivating land or exercising their professions;

but such cases are to be reported to the magistrate.

3614. In enforcing the provisions contained in the preceding rules, the darogah and other officers of police, and the village watchmen, are to be careful not to confound strangers coming from the adjacent districts or countries for the evident purpose of cultivating land, or exercising their several professions, with vagrants or other suspected persons. On the contrary, the darogahs are to afford all due and reasonable encouragement to persons coming of their own accord into their respective limits, who are desirous of settling therein from such industrious motives: the police officers are nevertheless to keep a watchful eye over such persons so long as it appears necessary; and the darogahs are invariably to report to the magistrate every instance, that comes to their knowledge, of an accession of this nature to the population of their respective divisions. Reg. XX. 1817, sect. 20, cl. 12.

Police officers to be punished for neglect of these rules.

3615. In any cases in which the police officers do not act in accordance with the rules contained in this section, and bodies of suspicious characters may be ascertained to have entered these provinces, or moved about their jurisdictions without their noticing them, they will be liable to severe punishment. C. O. Sup. Pol. *L. P.* No. 8 of 1845.

WEST BENGAL SECRETARIAT LIBRARY

SECTION IV.

OF IMMIGRANTS CREATING DISTURBANCES IN THEIR PARENT COUNTRIES.

Government may order removal of immigrants creating disturbances in the countries from which they have emigrated.

3616. Whenever the governor general in council, upon due investigation, is satisfied that the emigrants from any state,(a) who have sought an asylum in the British territories, or the descendants of any such emigrants, have abused the protection afforded to them by attempts to excite disturbances in the state from which they or their ancestors have emigrated, it is competent to the governor general in council to order the removal of those persons to such other part or parts of the country, as is judged most convenient for their future residence. In like manner it is competent to the governor general in council to order such removal, whenever he has grounds to be satisfied that the residence of any body of aliens, or their descendants, in the vicinity of the frontier of the country from which they or their ancestors have emigrated, is likely to cause any serious misunderstanding between that state and the British government. Reg. XI. 1812, sect. 2.

Rules for the disposal of the property of such persons ordered to be removed.

3617. Whenever any body of emigrants, or any individuals belonging to such body, are ordered to be removed from the part of the country, in which they have been established, they are to be allowed to dispose of any property, which they have acquired, in such manner as they judge proper; provided however that, if nevertheless they retain the right to any real property at the period of their actual removal, it is competent to the governor general in council to order such property to be sold by public auction under the superintendence of the collector of the district. In that case the nett proceeds of the sale are to be duly paid to the person or persons to whom the said property belonged. Reg. XI. 1812, sect. 3.

Government may order such persons committing such offences to be confined for such time as is deemed necessary.

3618. In cases in which the governor general in council is satisfied, on due inquiry and mature deliberation, that either the preservation of the tranquillity of the British territories or of the dominions of the allies of the British government, or the maintenance of the relations of amity subsisting between the British government and other states, requires that

(a) The preamble, which sufficiently explains the reasons for the enactment of these provisions, is as follows: "Whereas considerable bodies of persons, being natives of Arracan, and ordinarily denominated Mugs, have from time to time emigrated from that country, and established themselves in that part of the district of Chittagong, which lies contiguous to the Arracan frontier; and whereas numbers of those persons, or of their descendants, abusing the protection which had been afforded to them in the British territories, have excited disturbances and even levied war in the country of Arracan against the government of Ava, of which state Arracan is now a dependency, and have conducted themselves in a manner manifestly tending to disturb the relations of amity, which subsist between the British government and the government of Ava; and whereas it is in consequence necessary that the governor general in council should possess legal powers to remove the said bodies of emigrants and their descendants from the frontier of the territory of Arracan, or any other bodies of aliens or their descendants from the vicinity of the country, from which they may have emigrated, and likewise to detain in confinement any of those persons, or any other individuals being natives of foreign countries or their descendants, for offences of the above nature actually committed by them in the territories of the state from which they may have emigrated; and whereas it is necessary to make provisions for the trial of persons committing or aiding in the commission of the said offences; &c."

any of the leaders or other persons of the above description, who have committed the offences mentioned in sect. 2 of this regulation, should be placed and detained under restraint, it is competent to the governor general in council to order any such persons, having committed any of the said offences, but not otherwise, to be apprehended and committed to confinement at such place and under the custody of such public officer, and detained in confinement for such time, as is deemed by the governor general in council necessary for the public good. Reg. XI. 1812, sect. 4.

Such persons committing such offences liable to what penalty.

3619. Any persons of the above description, or their descendants, who, while living under the protection of the British government, enter the country from which they or their ancestors have emigrated, or any foreign country, and excite or attempt to excite disturbances in the said countries, are liable to be brought to trial for that offence before the sessions court, and if convicted are to be sentenced to suffer imprisonment for the period of 7 years. Reg. XI. 1812, sect. 5, cl. 1.

Persons assisting such parties to commit such offences liable to what penalty.

3620. Any persons, whether native British subjects, or aliens, who furnish emigrants from foreign countries with any assistance, either of men, money, or arms, in prosecution of their attempts to excite disturbances in the country, from which they have emigrated, or in any other country, or otherwise aid such aliens in the prosecution of their criminal design, are liable to be brought to trial for that offence before the sessions court, and if convicted are to be sentenced to suffer imprisonment for the term of 7 years : provided however that, if the session judge, by whom the case is tried, is of opinion that the punishment, established by this and the preceding clause, should in any instance be mitigated, he is to submit the proceedings held on the trial to the nizamut adawlut, who will recommend to the governor general in council such alleviation of the prescribed punishment, as they judge proper : provided moreover that no sentence or order, which is passed on the trial of any persons under the provisions of this regulation, is competent or is to be construed to preclude the governor general in council from the exercise of the power vested in the government by section 4. Reg. XI. 1812, sect. 5, cl. 2.

Such cases to be submitted for mitigation to nizamut adawlut.

Government may in all cases order imprisonment as above.

CHAPTER II.

OF OFFENCES AGAINST THE PUBLIC PEACE.

SECTION I.

OF STATE OFFENCES.

Rebellion.

Punishment for rebellion, or for waging war against the government.

3621. All persons owing allegiance to the British government who, after the passing of this Act, shall rebel, or wage war against the Queen or the government of the East India Company, or shall attempt to wage such war, or shall instigate or abet any such rebellion or the waging of such war, or shall conspire so to rebel or wage war, shall be liable, upon

conviction, to the punishment of death, or to the punishment of transportation for life, or of imprisonment with hard labor for any term not exceeding fourteen years; and shall also forfeit all their property and effects of every description. Act XI. 1857, sect. 1.

Punishment for harbouring or concealing offenders.

3622. All persons who shall knowingly harbour or conceal any person who shall have been guilty of any of the offences mentioned in the preceding section shall be liable to imprisonment, with or without hard labor, for any term not exceeding seven years, and shall also be liable to fine. Act XI. 1857, sect. 2.

Executive government may issue a commission for the trial of persons charged with certain offences in any proclaimed district.

3623. Whenever the executive government of any presidency or place within the said territories shall proclaim, that any district subject to its government is or has been in a state of rebellion, it shall be lawful for such government to issue a commission for the trial of all persons who shall be charged with having committed within such district, after a day to be specified in the commission, any of the crimes mentioned in the preceding sections, or any other crime against the state, or murder, arson, robbery, or other heinous crime against person or property. Act XI. 1857, sect. 3. cl. 1.

Court may be held in any part of the district.

3624. The commissioner or commissioners authorized by any such commission may hold a court in any part of the said district mentioned in the commission, and may there try any person for any of the said crimes committed within any part thereof; it being the intention of this Act, that the district mentioned in the commission shall, for the purpose of trial and punishment of any of the said offences, be deemed one district. Act XI. 1857, sect. 3, cl. 2.

Government may vest certain powers in the court.

3625. It shall be lawful for the executive government, by such commission, to direct that any court held under the commission shall have power, without the attendance or futwa of a law officer, or the assistance of assessors, to pass upon every person convicted before the court of any of the aforesaid crimes any sentence warranted by law for such crime; and that the judgment of such court shall be final and conclusive; and that the said court shall not be subordinate to the sudder court. Act XI. 1857, sect. 4.

Magistrate may commit persons for trial before a court held under this Act.

3626. If a commission be issued under the authority of this Act, any magistrate within the district, which is described in the commission, may commit persons charged with any of the aforesaid crimes within such district for trial before a court to be held under this Act. Act XI. 1857, sect. 5.

Act not to apply to British-born subjects or their children.

3627. Nothing in this Act shall extend to the trial or punishment of any of Her Majesty's natural-born subjects born in Europe, or of the children of such subjects. Act XI. 1857, sect. 6.

Government may issue proclamation prohibiting the carrying or possession of arms in any district.

3628. Whenever the executive government shall deem it necessary for the public safety, it shall be lawful for such government to declare, by proclamation, that from and after a day to be named therein, it shall not be lawful for any person, or for any specified class of persons, to carry or have in their possession any arms or instruments used for warlike purposes, or any specified description of arms or instruments aforesaid, within any district mentioned in the proclamation. Act XI. 1857, sect. 7.

Penalty for unlawful possession of arms, &c.

3629. After the day named in the proclamation, whoever shall carry, or have in his possession, any arms or other such instrument as aforesaid contrary to the proclamation

shall be liable, on conviction before a magistrate, to a fine not exceeding fifty rupees, or to imprisonment for a period not exceeding six months; and the arms or other such instrument as aforesaid shall be confiscated. Act XI. 1857, sect. 8.

Magistrate empowered to search houses, &c. and to seize arms.

3630. It shall be lawful for a magistrate, by warrant, to cause search to be made in any house or other place in which there may be reasonable grounds for suspecting that any arms or other such instrument as aforesaid, kept contrary to the proclamation, may be found; and any such arms or instrument may be seized and confiscated. Act XI. 1857, sect. 9.

Government may grant exemption to certain persons.

3631. Nothing in sections 7, 8, and 9 of this Act shall extend to any person who may be exempted by the authority of the executive government from the prohibition contained in such proclamation. Act XI. 1857, sect. 10.

Interpretation.

3632. The word "magistrate" in this Act shall include any person lawfully exercising the powers of a magistrate, and any assistant to a magistrate or deputy magistrate specially authorized by the executive government to exercise the powers vested in a magistrate by this Act. Act XI. 1857, sect. 11.

Forfeiture of property.

Forfeiture of property on conviction of mutiny.

3633. Every officer and soldier or other person subject to the articles of war for the native army, who shall be convicted of mutiny, shall forfeit all his property of every description. Act XXV. 1857, sect. 1.

Adjudication of forfeiture in case of death or escape of offender before conviction of an offence for which property is liable to be forfeited.

3634. If any person who shall have committed treason or any offence for which, by this Act, or Act XI. 1857, or Act XIV. 1857, or Act XVI. 1857, his property is declared to be forfeited, shall have been killed, or shall have died, or shall have escaped out of the territories of the British government, before he shall have been convicted of the offence, or cannot after diligent search be found; any court or other authority which might have tried such offender, if he could have been brought to trial, shall, upon the application of the magistrate or other officer authorized by government to make such application, hold an enquiry, and on proof that the person charged with having committed the offence was guilty thereof, and that he is dead, or has escaped out of the territories of the British government, or cannot after diligent search be found, shall adjudge that all the property of such offender shall be forfeited to government. Act XXV. 1857, sect. 2.

Forfeiture to extend to all property possessed by the offender at the time of the commission of the offence;

3635. The forfeiture, whether upon conviction of such an offence as aforesaid or upon an adjudication of forfeiture under this Act, shall extend to all property and effects of or to which the offender shall have been possessed or entitled, either at the time of committing the offence, or at the time of the conviction or of the adjudication of forfeiture, or at any intermediate time; and no sale, alienation, or other disposition of such property, made subsequently to the commission of the offence or made at any time with the fraudulent intention of preventing a forfeiture, shall have any effect against the right of government to the forfeiture. Provided that nothing in this section contained shall affect any transferree of any negotiable security, who shall prove that he acquired the same in good faith and with due caution for valuable consideration. Act XXV. 1857, sect. 3.

except negotiable security received in good faith and with due caution.

Forfeiture of land alienated without valuable consideration before the commission of the offence;

unless alienation made and registered three months before.

3636. All immoveable property of the offender, which shall be alienated after the passing of this Act and before the commission of any offence specified in section 2, shall be forfeited in the same manner as if no such alienation had been made, unless the alienation be made in good faith and for valuable consideration, or unless the same shall have been made and registered more than three months before the commission of the offence. Act XXV. 1857, sect. 4.

Court may specify in the conviction the day on which the offence was committed.

3637. The court, or other authority by which the offender shall be convicted or the forfeiture shall be adjudged, may specify in the conviction or adjudication the day on which the offence was committed, if it can be ascertained. Act XXV. 1857, sect. 5.

What matters shall be proved by the conviction or adjudication.

3638. In any proceeding concerning property alleged to have been forfeited, the conviction shall be conclusive evidence that the offence was committed, and (if the day be specified in such conviction) that the offence was committed on that day; if the day be not specified, the conviction shall be *primâ facie* evidence that the offence was committed on the day mentioned in the charge. In any such proceeding, an adjudication of forfeiture under this Act shall be *primâ facie* evidence of the commission of the offence, and (if the day be specified in the adjudication) that the offence was committed on that day; if the day be not specified, the adjudication shall be *primâ facie* evidence that the offence was committed on the day mentioned in the charge. Any adjudication under this Act shall be filed with and may be proved in the same manner as the records of the principal court of criminal jurisdiction of the district. Act XXV. 1857, sect. 6.

Procedure for obtaining possession of forfeited property.

3639. After the conviction or adjudication, the collector or other chief officer appointed by government for the collection of revenue, or any other officer whom the government may specially appoint, may seize and take possession of the forfeited property: if he require the assistance of a court to enable him to obtain possession of any such property by reason of any dispute respecting the title to the same or for any other cause, the principal civil court of original jurisdiction of the district in which the property is situate may, upon the production of a certified copy of the conviction or adjudication, hear and determine in a summary manner upon petition any matter in dispute relating to such property. Any order which may be passed by the court shall not be subject to appeal; but the party against whom the same may be given, by any court other than one of her majesty's supreme courts of judicature, shall be at liberty to bring a suit to establish his right at any time within one year from the date of the order. Act XXV. 1857, sect 7.

Forfeited property or the proceeds to be restored upon proof that escape was not for the purpose of evading justice.

3640. In case any person whose property shall have been so adjudged to be forfeited shall within one year after the seizure of any part of his property as a forfeiture surrender himself, and shall upon trial before a competent court be acquitted of the offence, his property or the proceeds thereof shall be restored upon proof, to the satisfaction of the court, that he did not escape or keep out of the way for the purpose of evading justice. Act XXV. 1857, sect. 8.

Limitation of suits, &c.

3641. No suit or other proceeding shall be had or taken on account of the seizure of any property seized in pursuance of this Act, or for the restoration or recovery of such

property or of the proceeds thereof, unless the same be instituted within one year from the time of the seizure. Act XXV. 1857, sect. 9.

Power to secure property before forfeiture in certain cases.

3642. In case it shall appear to a magistrate that there is reasonable ground to suppose that any person is guilty of any offence specified in section 2 of this Act, and that any property liable to forfeiture for the offence is likely to be made away with, it shall be lawful for the magistrate to attach such property and secure the same until the trial of the offender, or until an enquiry for the purpose of adjudication under this Act shall be had. Act XXV. 1857, sect. 10.

Interpretation.

3643. The word "magistrate" in this Act shall include any officer competent to commit for trial for any offence specified in section 2 of this Act. Act XXV. 1857, sect. 11.

Exciting mutiny.

Penalty for seducing soldiers or sailors from their allegiance, or exciting them to mutiny.

3644. Every person, who maliciously and advisedly endeavours to seduce any person or persons, serving or engaged to serve in her majesty's military or naval forces in India, from his or their allegiance to her majesty, or duty to the government; or who endeavours to stir up any person or persons belonging to either of the said services to commit any act of mutiny, or to make or endeavour to make any mutinous assembly, or to commit any traitorous or mutinous practice whatsoever, is, on conviction, to suffer transportation for life, or imprisonment with or without hard labor for any term not longer than seven years, as the court may adjudge. Act XIV. 1849, sect. 1.

Persons charged with such offences may be committed by any magistrate.

3645. Any person charged with any offence, punishable under this Act, may be committed by any magistrate within the territories under the British government in India and is to be tried by the court of sessions, or, if the offender be not within the ordinary jurisdiction of the court of sessions, by the supreme court of judicature established by royal charter within the presidency in which he is in custody. Act XIV. 1849, sect. 2.

Futwa not required.

3646. No court is on the trial of any offence under this Act to require any futwa from any law officer. Act XIV. 1849, sect 3.

Such offenders may be tried by court martial if amenable to military law.

3647. This Act is not to exempt any person governed by the articles of war from being tried by a court martial, and punished according to the articles of war; nor any person belonging to the Indian navy from being tried by a court martial, and punished according to the laws for the observance of discipline in the Indian navy; but no person is to be tried for the same offence under the said articles or laws, and also under this Act. Act XIV. 1849, sect. 4.

Tribunals.

May be tried before the ordinary tribunals.

3648. It is competent for the ordinary tribunals to try charges of treason, rebellion, or other crime against the state. Act V. 1841, sect. 1.

But government may issue a commission for the trial of such offences.

3649. It is competent for the government of any presidency to issue a commission for the trial of any offences of treason, rebellion, or crime against the state by one or more judges, together with such law officers as are required, or without any such officer, according as it is deemed expedient. Act V. 1841, sect. 2.

Otherwise, the ordinary courts are to proceed as usual.

3650. If government does not see fit to take the case out of the ordinary administration of criminal justice, the ordinary tribunals, established for the trial and punishment of offenders, are to proceed as usual. N. A. R. vol. 2, page 429.

Such special courts are to be guided by the same rules as ordinary courts; except that their sentence is to be reported before execution to the nizamut adawlut: and they are to be guided by special orders of government.

3651. The courts, convened under such commissions, are to try the prisoners brought before them in the same manner as in trials before the ordinary courts; and are to exercise all powers and authorities vested in such courts, except that their sentence, whether of acquittal or punishment, is in every instance to be reported with their proceedings to the highest court [of the Indian government] for criminal matters of the presidency, previous to carrying the same into execution; and they are to be guided as to the place where they are to assemble, the persons to be tried by them, and all other particulars not provided by any Regulation; or by any Act of the governor general in council, by the special orders, which they receive from the executive government, or from the highest court [of the Indian government] for criminal matters in the presidency. Act V. 1841, sect. 3.

Rule in case of the death or absence of any judge or law officers of such courts.

3652. In case of the death, or of the absence from indisposition or other cause, of any of the judges or law officers of the courts, which are appointed to try offenders under this Regulation, the remaining judge or judges, or law officer or officers, are to be competent to form a court, and to proceed with the trial or trials, until provision can be made by government for supplying the place of such judge or judges, or law officer or officers, if any such provision is deemed necessary; or, if no such provision is made, the powers and proceedings of the said courts are not to be affected by the death or absence of such judge or judges, or law officer or officers. Act V. 1841, sect. 4.

Nizamut adawlut to proceed as usual, but to report their sentence to government.

3653. The highest courts [of the Indian government] for criminal matters of the respective presidencies, on the receipt of any trials referred to them under this Act, are to proceed thereupon according to the rules in force with respect to other trials referred to them; except that they are in every instance to report their sentences to the executive government of the presidency for the time being; and are to wait the orders of government for the period of three calendar months, before they direct their sentence to be carried into execution. Act V. 1841, sect. 5.

Magistrates are to give information of such offences to government; and to be guided by the special orders of government.

3654. Where any person or persons are charged with the crimes mentioned in this Act, the magistrates are to give immediate notice thereof to the government; and are to pay immediate and strict attention to all orders, which are transmitted to them by government for the apprehension of persons charged as aforesaid, or for making any enquiry respecting such persons, or for committing them to take their trials before the ordinary courts, or before the special courts described in this Act. Act V. 1841, sect. 6.

Judges should not proceed with trial, until the orders of government have been received.

3655. A failure to report the case to government, was held insufficient to vitiate the trial, as the Act does not deprive the ordinary courts of their cognizance; but the judge was directed to abstain from trying prisoners in similar cases, until the formality had been complied with. Reports *L. P.* 1856, part 2, page 116.

Jurisdiction of supreme court.

3656. The Act is not to be construed to alter or affect the jurisdiction of any of her majesty's supreme courts of justice. Act V. 1841, sect. 7.

Martial law.

The functions of the ordinary criminal courts may

3657. The governor general in council is empowered to suspend, or to direct any public authority, or officer, to order the suspension of, wholly or partially, the functions of the ordinary criminal courts of judicature within any zillah, district, city, or other place

within any part of the British territories subject to the government of the presidency of Fort William, and to establish martial law therein for any period of time, while the British government in India is engaged in war with any native or other power; as well as during the existence of open rebellion against the authority of the government in any part of the territories aforesaid; and also to direct the immediate trial by courts martial of all persons owing allegiance to the British government, either in consequence of their having been born, or of their being resident, within its territories and under its protection, who are taken in arms in open hostility to the British government, or in the act of opposing by force of arms the authority of the same, or in the actual commission of any overt act of rebellion against the state, or in the act of openly aiding and abetting the enemies of the British government within any part of the said territories.(*a*) Reg. X. 1804, sect. 2.

be suspended, and martial law established during war or open rebellion

in such case persons owing allegiance to British government may be tried by courts martial for overt acts of rebellion or for assisting the enemy.

3658. Any person born, or residing, under the protection of the British government, within the territories aforesaid, and consequently owing allegiance to the said government, who, in violation of the obligations of such allegiance, is guilty of any of the crimes specified in the preceding section, and who is convicted thereof by the sentence of a court martial during the suspension of the functions of the ordinary criminal courts of judicature, and the establishment of martial law, is liable to the immediate punishment of death, and is to suffer the same accordingly by being hung by the neck till he is dead. All persons who, in such cases, are adjudged by a court martial to be guilty of any of the crimes specified in this regulation, are also to forfeit to the British government all property and effects, real and personal, which they possessed within its territories at the time when the crime, of which they are convicted, was committed. Reg. X. 1804, sect. 3.

Such persons found guilty of such offences to be punished with death,

and confiscation of all property and effects.

3659. The governor general in council is not precluded by this regulation from causing persons charged with any of the offences, described in the present regulation, to be brought to trial at any time before the ordinary courts of judicature, or before any special court appointed for the trial of such offences, under Act V. 1841(*b*), instead of causing such persons

But these provisions do not preclude the trial of such offences by the ordinary or the special courts described above, by order of government.

(*a*) The preamble of this regulation is—"Whereas during wars, in which the British government has been engaged against certain of the native powers of India, certain persons, owing allegiance to the British government, have borne arms in open hostility to the authority of the same, and have abetted and aided the enemy, and have committed acts of violence or outrage against the lives and properties of the subjects of the said government; and whereas it may be expedient that, during the existence of any war in which the British government in India may be engaged with any power whatever, as well as during the existence of open rebellion against the authority of the government, in any part of the British territories subject to the government of the presidency of Fort William, the governor general in council should declare and establish martial law within any part of the territories aforesaid for the safety of the British possessions, and for the security of the lives and property of the inhabitants thereof, by the immediate punishment of persons owing allegiance to the British government, who may be taken in arms in open hostility to the said government, or in the actual commission of any overt act of rebellion against the authority of the same, or in the act of openly aiding and abetting the enemies of the British government within any part of the territories above specified;" &c.

(*b*) The original mentions Reg. IV. 1799 and (*Ced. Prov*) Reg XX. 1803; but Act V. 1841 has entirely superseded those regulations, their provisions being re-enacted in it with some modifications.

to be tried by courts martial, in any cases, in which the latter mode of trial does not appear to be indispensably necessary. Reg. X. 1804, sect. 4.

Rules for the guidance of a magistrate, in whose district martial law is proclaimed.

3660. Whenever martial law is proclaimed in the district under his authority, the magistrate is to direct all officers in command of troops, which are employed within his jurisdiction, to act under the proclamation until it is recalled; leaving it to the discretion of such officers to confine the operation of the proclamation to the principal person, or persons, concerned in any of the acts of rebellion described above, or to extend it to their principal adherents and followers, as the exigency of the case may require. If any person, charged with any of the overt acts of rebellion specified in Reg. X. 1804, is apprehended by any military officer, when not in the actual commission of offences of that description, he is to be delivered over by the military to the civil power; and the magistrate is to commit him to close custody, and to adopt the necessary measures for bringing him to trial on a charge of high treason.(a) The magistrate is to attach all property, whether real or personal, which is situated within his jurisdiction, belonging to any person or persons, who are guilty of overt acts of rebellion against the authority of government; and to continue such property under attachment until the pleasure of government on the occasion is known. Whenever he attaches landed estates in virtue of this order, he is to place the same under the management of the collector of the district, with instructions to adopt the proper measures for realizing the revenues of such estates. Should the property of the rebels be situated in any other district, he is to make the necessary communication to the magistrate of such district, requiring him at the same time to attach the property in question, and to continue the same under attachment until he is furnished with the orders of government for his further guidance in the disposal of the property. If any property of persons, charged with acts of rebellion against the state, is attached by any military officers, it is to be delivered over to the magistrate, whether the owners have been taken in arms or otherwise, and to be retained under attachment pending the orders of government. The commander-in-chief was required to make these rules known to all military officers, and to enjoin a strict adherence to them in all cases to which they are applicable. Govt. Order, April 11, 1805.(b)

Persons, apprehended by military officer when not in the actual commission of overt acts of rebellion, are to be delivered over to the civil power.

Magistrate is to attach all property belonging to such persons, placing the landed estates under the management of the collector.

Military officers attaching property are to make it over to the magistrate.

(a) In English law high treason comprises, besides offences more immediately against the person of the Queen, —the levying war against the Queen by assembling with a number of persons (three or four is sufficient) armed and arrayed in a warlike manner with the intent to endeavour by force and arms to subvert the constitution and government of the realm; to force the Queen to put away her ministers, or any councillor, or other magistrate; to hold or defend any of the Queen's castles, &c., against the Queen or her forces, or to deliver them to rebels by treachery; to effect innovations of a public and general nature; or to obtain the repeal of a statute, or the redress of any public grievance, real or pretended :—the adhering to the Queen's enemies, by giving any assistance to such enemies unless on a well grounded apprehension of immediate death in case of refusal; by joining such enemies in acts of hostility against the realm, or even against the Queen's allies, although no acts of hostility are committed; or by sending money, arms, intelligence, or the like, to the Queen's enemies, although such money, intelligence, &c., be intercepted and never reach them :—and the conspiring to incite foreigners to invade the realm. In all these cases some overt act must be proved. *Blackstone, Comyns, and Archbold.*

(b) Harington's Analysis, vol 1, page 350.

Resisting the police does not amount to rebellion.

3661. It was held that the magistrate ought to have proceeded as for resistance of process against certain parties assembling to resist by force and arms the authority of the police officers. But the criminality of the resistance was not affected by the illegality of the police officers' proceedings. N. A. R. vol. 2, page 225.

Precedents.

Seditious practices and disturbing the peace.

3662. Teepoo Paugul, the head of a religious sect, dissuaded the ryots from paying rent to the zumeendars, and from working on the military road then in course of formation by order of government; and collected rents and exacted contributions from the people on the faith of his sacred character, and under the pretence that he would soon become badshah, or king of the country. He also established a place called the regal court, and collected arms therein. The consequences of this conduct were various disturbances, in which the officers of government were resisted, and several police officers and other people murdered; but it did not appear that he was personally concerned in any of these outrages. The nizamut adawlut held that the whole of his conduct was too ridiculous and paltry to admit of its being considered high treason against the state; and he was accordingly convicted of seditious practices, and disturbing the peace, and sentenced to imprisonment for 5 years with labor. N. A. R. vol. 2, page 429.

Rebellion attended with various murders and other enormities, and attacking the magistrate.

3663. Teetoo Meer, having acquired a reputation for sanctity, collected about him a numerous body of followers, engaged in serious acts of outrage and rebellion, committed various murders and other enormities, and opposed by force of arms the joint magistrate of Baraset, who went out to quell the disturbance, killing several of the sepoys and others of his guard. He was killed by the military force, sent out against them; but 184 of his followers were put upon their trial, charged with rebellion, attended with murder and wounding, and attacking the joint magistrate. The only justification attempted was that certain complaints preferred by them in the joint magistrate's court had been dismissed. The court convicted one of having headed the insurgent force, he having been conspicuously and actively engaged in the attack and massacre of the joint magistrate's party, and sentenced him capitally;—13 convicted of the principal charge were sentenced, 11 to imprisonment for life, and 2 in consequence of their youth (aged 18 and 20) for 7 years;—109 convicted of the minor part of the charge were sentenced, 18 ringleaders to imprisonment for 5 years, 40 for 4 years, 38 for 3 years, 10 for 2 years (9 in consideration of wounds, and 1, the son of Teetoo Meer, with reference to his youth and the evil influence and untimely loss of his father), and 3 discharged without punishment in consequence of loss of limbs from wounds;—57 were acquitted and released, 3 died before trial, and one was found to be insane. N. A. R. vol. 4, page 198.

Rebellion attended with the loss of one life, and resistance to the officers of government.

3664. In a trial for rebellion in the Tenasserim provinces, in which one life was lost and the officers of government were resisted with arms, the court, at the recommendation of the commissioner (who, although he had recorded a sentence of death against him, proposed a mitigation of the punishment) sentenced the ringleader to imprisonment for life in the local jail, as a better warning to others than transportation beyond seas; 2 to imprisonment for 14 years; 4 for 10 years; 10 for 5 years; and 2 for 2 years; all with labor in irons. N. A. R. vol. 6, page 36.

Rebellion not attended with murder, but involving acts of oppression and extortion.

3665. In a case of rebellion in Cuttack, which, although not attended with murder and speedily put down, yet occasioned severe calamities to numerous families, and was not the first nor second instance of this crime in the district, the nizamut adawlut sentenced 4 persons to transportation for life, 2 as ringleaders, one as having been only lately released from jail after an imprisonment of fourteen years for being concerned in a former rebellion, and one as being at the time he was engaged in the rebellion a thana burkundaz; 21 persons to imprisonment for 5 years with labor and irons; 24 to imprisonment for four years without irons, and a fine of 25 rupees each in lieu of labor; and 15 to imprisonment without irons for three years, and a fine of 20 rupees each in lieu of labor:—7 died, and the remainder were acquitted. N. A. R. vol. 5, page 46.

Mahomedan law.

Four descriptions of rebels.

3666. The Mahomedan law recognizes four descriptions of rebels, or persons who resist the authority of the rightful imâm: of these the first two are no better than, and are considered as, highway robbers, the only difference being that one acts upon some pretext of justification; the third are insurgents (*kharijee*) who assemble in a large body, and, possessing the means of resistance, withdraw from their obedience to the imâm on the plea that his title to the office is invalid, and that therefore it is justifiable to make war upon him: and the fourth are *baghat*, those who simply withdraw themselves from obedience to the rightful imâm. The two last classes only are subject to the peculiar provisions of the law which relate to rebellion. It seems doubtful how far the British government in India can be considered by lawyers as the rightful imâm; but this much has been conceded by the law officers, that the territory of the British government may be accounted "dar-ool-islam," and the provisions for baghawat, or rebellion, consequently held applicable upon trials for treason and insurrection against the established government. (*a*)—On the occurrence of a rebellion, it is incumbent on the imâm to endeavour, in the first instance, to remove the cause of dissatisfaction, and to recall the rebels to their allegiance by fair means; but he is not at the same time to neglect more forcible measures, such as may be sufficient to quell the insurrection at once. "Shafeï maintains that it is not lawful to make war upon rebels, until they commit acts of hostility, because it is not lawful to kill Mussulmans but for the purpose of repulsion, and rebels are Mussulmans; contrary to the case of infidels, the commencing war with whom is lawful, as their infidelity legalizes the putting them to death." He also says that "in neither case (whether they have a force in reserve or not) are their wounded to be slain, or those of them who fly from battle pursued, because the slaying of them is not lawful but for the purpose of repulsion; and upon a rebel being disabled, or flying from battle, the slaying of him is no longer for the purpose of repulsion, and consequently is

Who is the rightful imâm.

Rebellion is to be put down by fair means, if possible.

Opinion of Shafei that force cannot be applied to rebels, until they have committed acts of hostility; and that rebels flying from battle are not to be pursued.

(*a*) Mr. Harington says—"they have indeed rather erred in straining the application of these provisions to cases for which they were not intended; and as they do not authorize more than imprisonment, except during actual resistance, or for the purpose of quelling an open rebellion (when prisoners and fugitives may be put to death, if it appear necessary), the convicts have been declared liable to less punishments, under the special rules of tazeer for baghawat, than might have been inflicted, at the discretion of the ruling power and its judiciary delegates, on the general principles of seasut." *Analysis, vol. 1, page 295.*

illegal."(a) But this doctrine is opposed by Aboo Hanecfa and his disciples, who hold it lawful to judge of the intent of such persons by their overt acts, such as the assembling of an armed force. It seems however to be agreed that rebels should be immediately seized, and imprisoned until they repent, "in order that their wickedness may be (as far as possible) repelled." The property of rebels is not liable to confiscation, but is to be held in trust by the imâm until they repent, in which case it is to be restored to them. No punishment attaches to the murder of one rebel by another while in a state of rebellion; because, it is said, "the authority of the rightful imâm did not extend over him at the time of the murder." The sale of arms and ammunition to rebels, knowing them to be such, is an offence: but the rule does not apply to the materials used in the construction of such arms.(b)

Property of rebels to be held inviolate.

During rebellion one rebel may murder another.

Arms may not be sold to rebels

(a) It was on the ground of these opinions of Shafeï that the law officers declared the defendants, in the case cited in para. 3663, not liable to any legal penalty. But the futwas were justly disregarded by the nizamut adawlut, not only because they were contrary to the principles of natural justice, but also because the opinion of Shafei carries no weight when opposed to the doctrine of Aboo Hanecfa and his two disciples, "whose authority is paramount and exclusively governs judicial decisions in Bengal and Hindostan, as well as at Constantinople and other seats of Mahomedan dominion in Turkey and Tartary." Mr. Harington also observes that the doctrines of Shafeï have a limited prevalence only on the sea-coast of the Peninsula, and among the Malays.

(b) Hedaya, book 9, chap. 10. The above provisions, as Mr. Harington observes, look upon rebellion as a religious rather than a civil offence; and aim at prevention or suppression of the actual insurrection only, without providing by exemplary punishment against the recurrence of similar attempts. The necessity of a new law for the definition and punishment of crimes against the state was suggested to government in 1801 by the futwas of the law officers upon the trials, held in the preceding year, of the Nawab Shums-ood-doulah, and Meerza Jan Tupish: who were tried for being concerned in Wuzeer Ali's conspiracy against government, and as accomplices in the murder of Mr. Cherry and other persons at Benares in January 1799. Shums-ood-doulah was convicted "of attempts to enter into league with the sovereigns of other countries for the purpose of subverting the British government in Bengal; of endeavouring to connect himself with the zumeendars of Behar with the design of exciting an internal commotion; and of keeping up a treasonable correspondence." Meerza Jan Tupish was convicted of the charge of treason preferred against him "in being joined in the counsels of Shums-ood-doulah; in instigating the sending petitions and letters to Sultan Zuman Shah and his ministers of state; and in representing as a great advantage to Shums-ood-doulah the collusion of the zumeendars of soobah Azeemabad on the strength of a mokhtarnamah from them, which was a mere forgery, and without foundation." Yet in both cases the prisoners were declared by the futwas of the law officers of the special court who tried them, and of the nizamut adawlut, liable only to "imprisonment, until they should show signs of repentance to the satisfaction of the ruling power;" and the sentence accordingly passed upon each of them by the nizamut adawlut was "to be imprisoned, until the governor general in council shall be satisfied with the sincerity of their repentance." Upon the exposition of the Mahomedan law which governed this sentence, the governor general in council (in a letter to the nizamut adawlut, dated July 9, 1801) observed, that "the principle, on which this interpretation of the law is founded, appears to be, that the invasion of foreign powers, whom the criminals had solicited to attack the British possessions, and the plans of the same criminals for exciting internal insurrection in those possessions, had not been actually carried into effect. Under the native administration, this defect in the law would probably have been supplied by the exercise of that arbitrary power uniformly assumed in such cases by the Mahomedan government. But as the British government has wisely and honorably precluded itself from the exercise of such power, and has bound itself to administer justice according to the Mahomedan law, until that law shall be expressly altered, it is evident that the British power in India must be continually exposed to the most serious danger, unless this obvious defect of the Mahomedan law, with regard to the punishment of crimes committed against the state, be corrected." The nizamut adawlut were directed, in

SECTION II.

OF DESERTION.

Land Forces. European troops.

Persons confessing before magistrate that they are deserters, are to be deemed to have enlisted.

3667. Every person who shall voluntarily deliver himself up and confess himself to be a deserter from her majesty's Indian forces; or who, while serving in any of the said forces, shall, to any officer or non-commissioned officer thereof, confess himself to be a deserter as aforesaid; or who, upon being apprehended for any offence, shall, in the presence of the magistrate or of the commanding officer of the place, confess himself to be a deserter as aforesaid; shall be deemed to have been duly enlisted and to be a soldier, and shall be liable to serve in any such corps of the said forces as the officer commanding in chief at any of the said presidencies shall appoint, whether such person shall have been actually enlisted as a soldier or not; and he shall be liable to punishment in the same manner as if he had actually enlisted and had afterwards deserted. 12 and 13 Vict. cap. 43, sect. 46.

Punishment for inducing or assisting in desertion.

3668. Any person who shall, by words or by any other means whatsoever, directly or indirectly procure any soldier to desert, or shall, by words or by any other means whatsoever, attempt to procure or persuade any soldier to desert; and any person who, knowing that any soldier is about to desert, shall aid or assist him in deserting; or, knowing any soldier to be a deserter, shall conceal such deserter, or aid or assist such deserter in concealing himself, shall be deemed guilty of a misdemeanor, and shall on conviction thereof be liable to be punished by fine or imprisonment, or both, as the court before which such conviction shall take place may adjudge. 12 and 13 Vict. cap. 43, sect. 47. *See paras.* 3546 *et seq.*

Penalty on master in certain cases if a deserter be concealed on board his ship.

3669. If it shall appear that any officer or soldier, being a deserter from the land forces in the service of her majesty in India has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees. Provided always, that no conviction for such offence, as is hereinbefore described, shall be lawful, unless the same shall be stated in the charge which the party is called upon to answer; and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by

Proviso.

Charge may be in the alternative.

consequence, to frame the draft of a regulation conforming to the principles of English law with regard to the crime of treason, as far as local circumstances might admit, both in the definition of the crime, and in the punishment of persons convicted of it. This regulation though drafted was never passed; it being considered sufficient to enact Reg. X. 1804, the provisions of which have been cited in the text. In the case noted above, Meerza Beg and others, convicted of having accompanied Wuzeer Ali in arms to Mr. Cherry's house, were declared liable to "tazeer at the discretion of the ruler of the country;" and Meerza Beg, who appeared to have taken an active part in the massacre, was sentenced by the nizamut adawlut, on the 5th August, 1799, to suffer death. *Harington's Analysis, vol.* 1, *page* 294.

neglect of duty or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed. Act XI. 1856, sect. 1.

Jurisdiction.

3670. Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any justice of the peace for the presidency towns of Calcutta, Madras, and Bombay, or for any of the settlements of Prince of Wales' Island, Singapore, and Malacca, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate in any port within the territories of the British government within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a justice of the peace shall be punishable on summary conviction. Act XI. 1856, sect. 2.

Conviction to be quashed on merits only · form of conviction, &c.

3671. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. Act XI. 1856, sect. 3.

Saving of proceedings under Act XIV. 1849.

3672. Nothing in this Act contained shall prevent any justice of the peace, magistrate, or other officer having authority in that behalf, from committing for trial any person who shall be charged with an offence punishable under Act XIV. 1849,* or any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act. Provided that no proceedings shall have been had against such person in respect of the same offence under this Act. Act XI. 1856, sect. 4.

* *See para.* 3644.

Proviso.

Commanding officer may issue warrants for apprehension of deserters.

3673. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commanding officer of any fort, garrison, station, regiment, or detachment, at any port or place within the territories of the British government, in which no person lawfully exercising magisterial powers can be found, which oath or affirmation the several persons above named shall severally under this Act have power to administer; or whenever, on such information as aforesaid given to any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, having jurisdiction within such port or place, there shall appear reason to suspect that any European officer or soldier belonging to the said forces, who may have deserted or be absent without leave, is on board any ship, vessel, or boat, or is concealed on shore at any such port or place within the territories of the British government, it shall be lawful for such commanding officer or justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate as aforesaid, to issue a warrant authorizing the person or persons to whom such warrant may be addressed, to

enter into and search, at any time of the day or night, any such ship, vessel, or boat, or any house or place on shore, and to apprehend any such officer or soldier, and to detain him in custody in order to his being dealt with according to law. Act XI. 1856, sect. 5.

Warrant to whom to be addressed and by whom to be executed.

3674. The warrant to be issued under the preceding section may be addressed to any European officer or soldier of the said forces, or to all constables, peace officers, and other persons who may be bound to execute the warrant of any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform, and obey such warrant. Act XI. 1856, sect. 6.

Persons apprehended how to be dealt with, &c.

3675. Every person who shall be apprehended under any warrant under section 5 of this Act, shall be brought without delay before a justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, in or near the place wherein such person shall have been arrested; who shall examine such person, and, if he shall be satisfied either by the confession of such person or the testimony of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the said forces, shall cause him to be delivered, together with any depositions and papers relative to the case, to the commanding officer of the regiment, corps, or detachment to which he shall belong, if the same shall be in or near the place of such arrest, or, if otherwise, then to the commanding officer of the nearest military station, in order that he may be dealt with according to law. Act XI. 1856, sect. 7.

Indian navy.

Penalty for instigating desertion from the Indian navy or concealing deserter.

3676. Whoever, directly or indirectly, instigates or procures any officer, seaman, or other person belonging to the Indian navy to desert, or knowing that any officer, seaman, or other person belonging to the Indian navy is about to desert, assists him in deserting; or, knowing any officer, seaman, or other person belonging to the Indian navy to be a deserter, harbours, conceals, or assists in concealing such deserter, shall, for every such offence, be liable to a fine not exceeding one thousand rupees. Act III. 1855, sect. 2.

Penalty on master in certain cases, if a deserter be concealed on board his ship.

3677. If it shall appear that a deserter has been concealed on board any merchant vessel, and that the master or person in charge of such vessel for the time being, though ignorant of the fact of such concealment, might have known of the same but for some neglect of his duty as such master or person, or for the want of proper discipline on board his vessel, such master or person shall be liable to a fine not exceeding five hundred rupees. Provided always, that no conviction for such minor offence as is lastly hereinbefore described, shall be lawful unless the same shall be stated in the charge which the party is called upon to answer; and in such charge it shall be lawful to state in the alternative that the party has either knowingly harboured or concealed a deserter on board his vessel, or has, by neglect of duty, or by reason of the want of proper discipline on board the vessel, allowed such deserter to be so concealed. Act III. 1855, sect. 3.

Charge may be in the alternative.

Jurisdiction.

3678. Any person, whether a European British subject or not, who shall be guilty of an offence punishable under this Act, shall be punishable for the same by any justice of the

peace for any of the presidency towns of Calcutta, Madras, and Bombay, or for any of the settlements of Prince of Wales' Island, Singapore, and Malacca, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate in any port within the territories of the British government in India, within whose jurisdiction the offence may have been committed, or such person may have been apprehended or found, whether the offence shall have been committed within the local limits of the jurisdiction of such officer or not; and any person hereby made punishable by a justice of the peace, shall be punishable on summary conviction. Act III. 1855, sect. 4.

Conviction to be quashed on merits only. Form of conviction, &c.

3679. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari*; and, if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. Act III. 1855, sect. 5.

Saving of proceedings under Act XIV. 1849.

3680. Nothing in this Act contained shall prevent any justice of the peace, magistrate, or other officer having authority in that behalf, from committing for trial any person who shall be charged with an offence punishable under Act XIV. 1849,* or any other Act hereafter to be in force, notwithstanding that such offence may be also punishable under this Act: provided that no proceedings shall have been had against such person in respect of the same offence under this Act. Act III. 1855, sect. 6.

* *See para* 3644.

Commander-in-chief of Indian navy, &c., may issue warrants for apprehension of deserters.

3681. Whenever, on information given on oath or solemn affirmation, where by law a solemn affirmation may be used instead of an oath, to the commander-in-chief of the Indian navy, or other person who shall be in the performance of the duties of superintendent of the Indian navy, or his deputy, or, in their absence, to the senior officer of the Indian navy at any port or place within the territories of the British government in India, which oath or affirmation the several persons above-named shall severally under this Act have power to administer; or whenever, on such information as aforesaid, given to any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, having jurisdiction within such port or place, there shall appear reason to suspect that any officer, seaman, or other person belonging to the Indian navy, who may have deserted or be absent without leave, is on board any ship, vessel, or boat, or is concealed on shore at any such port or place within the territories of the British government in India; it shall be lawful for such commander-in-chief of the Indian navy, or person performing the duties of superintendent of the Indian navy, or his deputy, or such senior officer, or justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, as aforesaid, to issue a warrant authorizing the person or persons to whom such warrant may be addressed to enter into and search, at any time of the day or night, any such ship, vessel, or boat, or any house or place on shore, and to apprehend any such officer, seaman, or person belonging to the

Indian navy, and to detain him in custody in order to his being dealt with according to law. Act III. 1855, sect. 7.

Warrant to whom to be addressed, and by whom to be executed.

3682. The warrant to be issued under the preceding section may be addressed to any persons in the Indian navy, or to all constables, peace officers, and other persons who may be bound to execute the warrant of any justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, and acting in the execution of this Act; and all such persons shall be bound to execute, perform, and obey such warrant. Act III. 1855, sect. 8.

Persons apprehended how to be dealt with, &c.

3683. Every person, who shall be apprehended as a deserter from the Indian navy under any warrant under section 7 of this Act, shall be brought without delay before a justice of the peace, magistrate, joint magistrate, or person lawfully exercising the powers of a magistrate, in or near the place wherein such person shall have been arrested, who shall examine such person, and, if he shall be satisfied, either by the confession of such person or the testimony of one or more witness or witnesses, or by his own knowledge, that such person is a deserter from the Indian navy, shall cause him to be placed on board some vessel of the Indian navy, in order that he may be dealt with according to law; and, if there shall be no such vessel in or near the place wherein such deserter shall have been apprehended, shall cause such deserter to be conveyed to the nearest or most convenient prison, and to be detained there until he can be placed on board a vessel of the Indian navy for such purpose as aforesaid: and, in every case in which any person shall be committed to prison as aforesaid, the committing magistrate shall transmit an account thereof to the commander-in-chief of the Indian navy or to the officer commanding some vessel of the Indian navy; and every person so committed to prison shall be entitled to his discharge from custody under such commitment, unless within three months from the date thereof he shall, on the requisition of the said commander-in-chief, or such other officer as aforesaid, have been placed on board one of the vessels of the Indian navy in order that he may be dealt with according to law. Act III. 1855, sect. 9.

SECTION IIA.

OF ARMS AND AMMUNITION.

In places to which this section is extended, written notice of the possession of arms, shall be given to the magistrate.

3684. In any district or place to which the provisions of this section shall be extended by order of the governor general of India in council or of the executive government of any presidency or place, every person shall, within such time as shall be mentioned in the order, or, if no time be mentioned therein, within one week from the publication of the order in the district or place, give notice in writing to the magistrate, or other officer specified by the executive government, of any fire-arms, bayonet, sword, spear, spear-head, or other deadly weapon to be specified in such order, which shall be in his possession or shall be on his premises in the possession of any of his retainers or servants; and shall also give immediate

notice in writing of all other arms of the like description, which shall at any subsequent time come into his possession or into the possession of any of his retainers or servants as aforesaid. The notice shall specify the number and description of the arms so possessed, and also, in the case of arms so possessed by retainers or servants, the names of such retainers or servants and in what capacities they are respectively employed. Act XXVIII. 1857, sect. 1.

What to be specified in the notice.

3685. Whoever wilfully neglects to give such notice as aforesaid shall be liable, on conviction before a magistrate, to a penalty not exceeding five hundred rupees; and all arms in the possession of such person may be seized and shall be confiscated if the convicting magistrate shall so adjudge: and in case the arms of which he shall so neglect to give notice shall exceed what may be considered reasonable for the private use of such person, he shall be liable to imprisonment with or without hard labor for a term not exceeding two years, and shall also be liable to a fine not exceeding five thousand rupees; and all the arms and any ammunition or military stores in the possession of such person or on his premises shall be confiscated. Act XXVIII. 1857, sect. 2.

Penalty for wilful neglect to give notice.

3686. The magistrate shall cause to be prepared from such notices a register of the names of persons having arms in their possession, and the number and description of such arms; and shall also, at the request of any person giving such notice as aforesaid, deliver to him a certificate specifying the date of the notice and the number and description of arms specified therein. Act XXVIII. 1857, sect. 3.

Register to be prepared, and certificates to be granted on request.

3687. If, in the judgment of the government or of the magistrate, any such arms as aforesaid or any ammunition in the possession of any person cannot be left in such possession without danger to the public peace, it shall be lawful for the magistrate to cause such arms or ammunition to be seized and detained in safe custody for such time as may be deemed necessary. Act XXVIII. 1857, sect. 4.

Seizure and detention of arms and ammunition by the magistrate.

3688. In any district or place to which the provisions of this section shall be extended by order of the governor general of India in council or of the executive government of any presidency or place, if any person goes armed with any such arms as aforesaid, and shall not produce a certificate from a magistrate, or other officer authorized by government to grant licenses to go armed, that he has obtained such a license or that he is exempted by government from the foregoing provisions, or give reasonable proof of his being otherwise exempted from the said provisions, he shall be liable to be disarmed by any magistrate, deputy magistrate, or assistant to a magistrate, or by any European commissioned officer in the service of her majesty, or by any member of a volunteer corps enrolled by authority of government whilst on duty, or by any police officer, if, in the judgment of such magistrate or other person as aforesaid, it is dangerous to the public peace to allow such person to go armed. Provided always that if any person shall have a license from the magistrate of the district or place, at which he resides or may be, to carry on a journey such arms as the magistrate may consider reasonable for his private use, and shall obtain from such magistrate a certificate stating the name and address of the licensee, the route by which he intends to proceed, the time which such journey is

In places to which this section is extended, persons going armed may be disarmed in certain cases.

What officers &c. authorized to disarm.

License to travellers to carry arms.

expected to occupy, and the arms which he is permitted to carry, such certificate shall have the same force and effect according to its tenor in every district or place specified therein as if leave to go armed had been granted by the magistrate of such district or place. Act XXVIII. 1857, sect. 5.

Exemptions; officers, soldiers, and sailors; volunteers; police and revenue officers, other persons. Armament of ships exempt.

3689. The foregoing provisions shall not apply to—1. Officers, soldiers, and sailors, in the military or naval service of her majesty in respect of arms and ammunition kept by them for use in the public service. 2. Members of volunteer corps in respect of such arms and ammunition. 3. Police and revenue officers and other persons in respect of arms and ammunition furnished by government for use in the public service, or provided by themselves with the sanction of government for such use. 4. Such other persons as the government may think fit to exempt from such provisions. —— Arms and ammunition belonging to any ship or vessel, not exceeding the reasonable armament thereof, shall also be exempt from such provisions. Act XXVIII. 1857, sect. 6.

Penalty for manufacturing or dealing in arms or ammunition without license, or contrary to the conditions therein contained.

3690. If any person shall manufacture, repair, sell, or keep or expose for sale, any arms of the description hereinbefore mentioned, or shall manufacture, or sell, or keep or expose for sale, percussion-caps, gunpowder, or other ammunition, without a license to manufacture or deal in arms or ammunition, as the case may be, or contrary to any of the conditions contained in any such license, he shall be liable, on conviction before a magistrate, to a penalty not exceeding five hundred rupees, in addition to double the value of any arms or ammunition sold; and all arms and ammunition belonging to the offender shall be forfeited if the convicting magistrate shall so adjudge. Act XXVIII. 1857, sect. 7.

Licenses by whom to be granted.

3691. Licenses to manufacture or deal in percussion-caps shall be granted by the governor general in council, or by the executive government, or by an officer specially authorized by the governor general in council or by the executive government to grant such licenses. Licenses to manufacture or deal in arms and ammunition other than percussion caps may be granted by a magistrate or by an officer authorized by the governor general in council or by the executive government to grant such licenses. Act XXVIII. 1857, sect. 8.

Licensed manufacturers or dealers to enter in a book an account of stock-in-trade, names of purchasers &c. Inspection of book.

3692. Every person licensed to manufacture or deal in arms, percussion-caps, or other ammunition, shall enter, in a book to be kept by him for that purpose, an account of all the stock-in-trade which he may from time to time have in his possession or under his control, and also the name and address of every purchaser of arms or ammunition sold by him, together with the nature, description, and quantity of such arms or ammunition. Such book shall be open at all times to inspection by the magistrate or other duly authorized officer, by whom copies may be taken of all entries therein contained. If any such person shall omit or fail duly to keep such a book or to make therein all such entries as are hereby required, or if any person shall prevent or obstruct the inspection of such book or shall make a false entry therein, he shall be liable for every such offence, on conviction before a magistrate, to a penalty not exceeding five hundred rupees, in addition to double the value of any arms or ammunition sold of which he shall fail to make such entry or

respecting which he shall make a false entry; and if the offender be licensed to manufacture or deal in arms or ammunition, he shall also forfeit his license if the convicting magistrate shall so adjudge. Act XXVIII. 1857, sect. 9.

Magistrate or other officer may inspect dealer's premises.

3693. The magistrate or other officer authorized by government may at any time enter the premises in which arms or ammunition shall be manufactured or kept by any licensed manufacturer of or dealer in arms or ammunition, in order to inspect the stock-in-trade of such manufacturer or dealer; and if any such manufacturer or dealer shall intentionally conceal from such magistrate or other officer as aforesaid any part of his stock-in-trade, or shall wilfully refuse to point out where the same is kept, he shall be liable, on conviction before a magistrate, to a penalty not exceeding five hundred rupees; and all the stock-in-trade belonging to such person may be seized and shall be confiscated if the convicting magistrate shall so adjudge. Act XXVIII. 1857, sect. 10.

Conditions and revocation of license.

3694. Any license granted under the provisions of section 8 may be granted subject to such conditions as shall be thought necessary, and may be revoked or suspended by the person or persons authorized to grant such licenses. Act XXVIII. 1857, sect. 11.

Arms, ammunition, and sulphur, &c., not to be imported without license.

3695. No arms or ammunition, and no sulphur or saltpetre, shall be imported either by sea or by land into any part of the territories, in the possession of and under the British government in India, without the license of the governor general in council or of the executive government. Act XXVIII. 1857, sect. 12.

Penalty for importation without license.

3696. If any person shall import or attempt to import without such license, either by sea or by land, into any part of the said territories, any arms or ammunition, or any sulphur or saltpetre; or shall aid or assist in such importation or in such attempt to import; or shall knowingly conceal or assist in concealing any arms or ammunition, or any sulphur or saltpetre, imported without such license;—he shall be liable, on conviction before a magistrate, to imprisonment with or without hard labor for any term not exceeding two years, and also to a penalty not exceeding one thousand rupees; and the articles so imported shall be confiscated if the convicting magistrate shall so adjudge. Act XXVIII. 1857, sect. 13.

Importation of arms and ammunition for private use.

3697. The provisions of the two last preceding sections shall not extend to arms and ammunition imported in reasonable quantities for private use; but the collector of customs may at any time detain any such articles, if he shall think it necessary, until he shall receive the orders of government. Nothing in this section shall exempt any person from the obligation of giving any notice required by this Act. Act XXVIII. 1857, sect. 14.

Government may prohibit transport of arms, ammunition, military stores, &c.

3698. The governor general in council may by order prohibit the transport of arms, ammunition, military stores, sulphur, or saltpetre, or any particular description of arms, ammunition, or military stores, from one part of India to another, or the transport thereof in any particular direction to be specified in the order, or prohibit the transport thereof except according to such rules and conditions as may be specified in the order; and the executive government of any presidency or place shall have the like power within the territories under their government. Act XXVIII. 1857, sect. 15.

Penalty for prohibited transport.

3699. If any person shall transport or cause to be transported, or shall attempt to transport or cause to be transported, or shall aid in transporting, any arms, ammunition, military stores, sulphur, or saltpetre, contrary to such order or to the rules and conditions specified therein, he shall be liable, on conviction before a magistrate, to a penalty not exceeding five hundred rupees; and the articles transported or attempted to be transported shall be confiscated. If any person shall by concealment or other device transport or cause to be transported, or attempt to transport or cause to be transported, such arms, ammunition, military stores, sulphur, or saltpetre, he shall, in addition to the penalty hereby provided, be liable upon such conviction to imprisonment with or without hard labor for a term not exceeding two years. Act XXVIII. 1857, sect. 16.

Persons conveying arms, ammunition, &c under suspicious circumstances may be apprehended without warrant.

3700. If any person shall be found carrying or conveying arms, ammunition, military stores, sulphur, or saltpetre in such a manner or under such circumstances as to afford just grounds of suspicion that the same are being carried by such person with intent to use the same, or that the same may be used, for any unlawful purpose dangerous to the public peace, it shall be lawful for any of the public officers mentioned in section 5 of this Act, or for any other person, to apprehend without warrant the person so carrying or conveying such arms, ammunition, military stores, sulphur, or saltpetre, and to detain such person in custody in order that he may be dealt with according to law. If any person be apprehended by a person not being a magistrate, deputy magistrate, or assistant to a magistrate, or police officer, he shall be delivered over as soon as possible to a police officer; and all persons apprehended by or delivered to a police officer under the provisions of this Act shall be carried before a magistrate or other officer competent by law to punish him for the offence or to commit him for trial. Act XXVIII. 1857, sect. 17.

Procedure if apprehended by other than magistrates, &c.

Government may prohibit sale of sulphur.

3701. Whenever the governor general in council or the executive government shall consider it necessary so to do, they may by order prohibit the sale of sulphur; and any person selling sulphur contrary to such order shall be liable, on conviction before a magistrate, to a penalty not exceeding five hundred rupees; and all sulphur belonging to such person shall be confiscated if the convicting magistrate shall so adjudge. Act XXVIII. 1857, sect. 18. The governor general in council or the executive government may also at any time seize all sulphur in the possession of any person, and detain the same for such time as they may deem necessary for the public safety. Act XXVIII. 1857, sect. 19. Nothing in the two preceding sections shall apply to sulphur kept or sold in reasonable quantities for medicinal purposes. Act XXVIII. 1857, sect. 20. The government may exempt any person from the provisions of sections 18 and 19 upon such conditions, if any, as such government may consider necessary. Act XXVIII. 1857, sect. 21.

Penalty.

Seizure and detention of sulphur by government.

Exception.

Government may exempt persons from the provisions of sections 18 and 19.

Penalty for wilful neglect to give notice of possession of ammunition &c. in certain cases.

3702. The government may require all persons having in their possession ammunition or other military stores or sulphur, in any greater quantities than are considered reasonable for private use, to give notice thereof to the magistrate or other officer specified by government; and any person who wilfully neglects to give such notice shall be liable,

on conviction before a magistrate, to imprisonment with or without hard labor for a term not exceeding two years, and shall also be liable to a fine not exceeding five thousand rupees; and all ammunition, military stores, or sulphur in the possession of such person or upon his premises shall be confiscated. Act XXVIII. 1857, sect. 22.

Power to enter and search houses.

3703. If any magistrate have reasonable cause for suspecting that arms, ammunition, or sulphur liable to confiscation are in any house, building or other place, or that any arms, ammunition, or sulphur are in any house, building, or other place in the possession of any person in whose possession they cannot be left with safety to the public peace, he may, with such assistance as he shall think necessary, by night or by day and by force if necessary, enter and search any such house or place, or cause the same to be entered and searched. It shall be competent to a magistrate to delegate to any of his European assistants the powers conferred on him by this section. Act XXVIII. 1857, sect. 23.

General search for arms, ammunition, &c., may be ordered in any district.

3704. The governor general of India in council, or the executive government of any presidency or place, or the chief commissioners of the Punjab and Oude respectively, or the commissioners of Nagpore and Scinde respectively, or any other persons authorized by government, may order a general search for arms, ammunition, or sulphur to be made, by any officers or persons named in such order, in any district or place specified therein. The persons authorized by such order, and all persons acting under their authority, shall have the like powers of entry, search, and seizure as are conferred by the last preceding section. Act XXVIII. 1857, sect. 24.

Penalty for not producing or for concealing arms, ammunition, &c., when search made.

3705. If, on any search being made, any person shall refuse to produce or point out to the persons making the search, or shall conceal or attempt to conceal, any arms, ammunition, or sulphur, such person may be apprehended without warrant, and shall be liable, on conviction before a magistrate, to imprisonment with or without hard labor for a term not exceeding two years in addition to any other penalty to which he may be subject under this Act. Act XXVIII. 1857, sect. 25.

Penalty for making, using, or keeping cannon, &c., without license, in any district to which this section is extended.

3706. After such time as shall be mentioned in the order of government extending the provisions of this section to any district or place, or, if no time be mentioned, after one week from the publication of the order in the district or place, no person shall manufacture, use, or have in his possession any cannon, howitzer, or mortar, without a license from the governor general of India in council or from the executive government of any presidency or place. If any person shall manufacture, use, or have in his possession any cannon, howitzer, or mortar, without such license, he shall be liable, on conviction before a magistrate, to a fine not exceeding two thousand rupees, and to imprisonment for a term not exceeding two years; and such cannon, howitzer, or mortar may be seized and shall be forfeited to government. Any person who has in his possession any cannon, howitzer, or mortar at the time when this section takes effect in any district or place, and who shall be unwilling to apply for a license to retain possession thereof, may surrender the same to the magistrate within such period as aforesaid. The provisions of this section shall not extend to any cannon,

Surrender of cannon, &c., by persons not willing to take out license for retaining possession thereof.

Exception of armament of ships.

howitzer, or mortar forming part of the ordinary armament of any ship or vessel. Act XXVIII. 1857, sect. 26.

Penalty for assaulting or resisting any person in the execution of any power vested in him by this Act.

3707. Whoever assaults or resists, or aids or assists any person in assaulting or resisting, any person in the execution of any power vested in him by this Act, shall be liable, on conviction before a magistrate, to a fine not exceeding two hundred rupees, or to imprisonment with or without hard labor for any term not exceeding six calendar months. Act XXVIII. 1857, sect. 27.

Notice and limitation of suits.

3708. No suit, action, or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act without giving to such person a month's previous notice in writing of the intended action and of the cause thereof, nor after tender of sufficient amends, nor after the expiration of three months from the accrual of the cause of action or other proceeding. Act XXVIII. 1857, sect. 28.

Imprisonment if fine not paid.

3709. If any fine or penalty imposed by a magistrate under the authority of this Act be not immediately paid, the magistrate may commit the offender to jail, there to be imprisoned according to the discretion of the magistrate for any term not exceeding six months where the amount of the fine or penalty shall not exceed five hundred rupees, and for any term not exceeding twelve months in any other case; the commitment to be determinable in each of the cases aforesaid on payment of the amount. Act XXVIII. 1857, sect. 29.

Rewards to informers.

3710. Any fine or penalty levied from any person convicted of an offence under this Act, or any portion of such fine or penalty, may be awarded to the person on whose information the conviction shall take place. Act XXVIII. 1857, sect. 30.

Interpretation of the word "magistrate."

Commissioners of police in presidency towns may exercise the powers hereby given to a magistrate, other than powers of conviction and confiscation which lie with the police magistrate.

3711. The word "magistrate" shall include any person exercising the full powers of a magistrate. And within the presidency towns and in the Straits' settlement, all powers of conviction and confiscation upon conviction given by this Act to a magistrate, shall be exercised by the police magistrates; and all other powers given by this Act to a magistrate may be exercised by the commissioner of police; and all notices hereby required to be given to a magistrate shall in any such presidency town or in the Straits' settlement be given to the commissioner of police. Act XXVIII. 1857, sect. 31.

Persons having the immediate superintendence of the police may be vested with the powers hereby given to a magistrate, other than powers of conviction and confiscation.

3712. Whenever in any presidency or place the immediate control and superintendence of the police is vested in any person other than the magistrate or such commissioner of police as aforesaid, the executive government may order that all or any of the powers given by this Act to a magistrate, other than powers of conviction and confiscation upon conviction, shall be exercised by such person, and that all notices hereby required to be given to a magistrate shall be given to such person. Act XXVIII. 1857, sect. 32.

Act or any part of it to take effect in any district to which it is extended by government.

3713. This Act, or any part or parts thereof, shall take effect in any district or place to which the same shall be extended by order of the governor general of India in council or of the executive government of any presidency or place. Act XXVIII. 1857, sect. 33.

Parts of district may be withdrawn from the operation

3714. It shall be lawful for the governor general in council or the executive government of any presidency or place from time to time to withdraw from the operation of all

or an y of the provisions of this Act any part or parts of any district or place which they may previously have declared to be subject thereto; and in like manner, as occasion shall require to subject the same again to the operation of all or any of the provisions of this Act. Act XXVIII. 1857, sect. 34. of the Act and again made subject to it.

3715. The Act shall continue in force for two years. Act XXVIII. 1857, sect. 35. Extended to the end of the year 1859, by Act XIX. 1859. Duration of Act.

NOTE.

It is considered unnecessary to insert the following temporary enactments, which will cease to be in force on the dates specified: viz.—

Act XIV. 1857, *entitled* "AN ACT to make further provision for the trial and punishment of certain offences relating to the army, and of offences against the State."

Act XVI. 1857, *entitled* "AN ACT to make temporary provision for the trial and punishment of heinous offences in certain districts."

Act XVII. 1857, *entitled* "AN ACT to provide temporarily for the apprehension and trial of native officers and soldiers for mutiny and desertion."

The duration of these 3 *Acts was extended to the end of the year* 1859 *by Act XXII.* 1858.

Act X. 1858, *entitled* "AN ACT to authorize the confiscation of villages, the imposition of fines, and the forfeiture of certain offices in cases of rebellion and other crimes committed by inhabitants of villages or by members of tribes; and also to provide for the punishment of proprietors of land who neglect to assist in the suppression of rebellion or in the apprehension of rebels, mutineers, or deserters." *This Act will cease to be in force on the* 19*th March* 1860.

Act XI. 1858, *entitled* "AN ACT to authorize the infliction of corporal punishment in certain cases." *This Act will cease to be in force on the* 4*th April* 1860.

Act XIII. 1858, *entitled* "AN ACT for the punishment of persons who unlawfully possess or conceal arms or other property belonging to Her Majesty or to the East India Company." *This Act will cease to be in force on the* 4*th April* 1860.

Act XXVI. 1858, *entitled* "AN ACT to make further provision for the trial and punishment of offences against the State." *This Act will cease to be in force after the end of the year* 1859.

SECTION III.

OF PRINTING PRESSES.

Under what rules periodical works of news may be published.

3716. No printed periodical work whatever, containing public news or comments on public news, is to be published within the territories of the British government in India except in conformity with the rules hereinafter laid down. The printer and publisher of every such periodical work are to appear before the magistrate of the jurisdiction, within which such work shall be published, and are to make and subscribe in duplicate the following declaration:—"I, A. B. declare that I am the printer (or publisher, or printer and publisher) of the periodical work entitled———, and printed (or published, or printed and published) at———:" and the last blank in this form of declaration is to be filled up with a true and precise account of the premises where the printing or publication is conducted. As often as the place of printing or publication is changed, a new declaration is necessary. As often as the printer or publisher, who has made such declaration, leaves the territories of the British government in India, a new declaration from a printer or publisher, resident within the said territories, is necessary. Act XI. 1835, sect. 2.

Form of declaration to be made by printer and publisher.

When new declaration is necessary.

Penalty for breach of the above rules.

3716*a*. Whoever prints or publishes any such periodical work, as is hereinbefore described, without conforming to the rules hereinbefore laid down; or whoever prints or publishes, or causes to be printed or published, any such periodical work, knowing that the said rules have not been observed with respect to that work; is, on conviction, to be punished with fine to an amount not exceeding 5,000 rupees, and imprisonment for a term not exceeding two years. Act XI. 1835, sect. 3.

The originals of such declarations where to be deposited.

3716*b*. Each of the two originals of every declaration so made and subscribed, as is aforesaid, is to be authenticated by the signature and official seal of the magistrate before whom the said declaration has been made; and one of the said originals is to be deposited among the records of the office of the said magistrate, and the other original is to be deposited among the records of the supreme court of judicature, or other Queen's court, within the jurisdiction of which the said declaration has been made. And the officer in charge of each original is to allow any person to inspect that original on payment of a fee of one rupee; and is to give to any person applying a copy of the said declaration, attested by the seal of the court which has the custody of the original, on payment of a fee of 2 rupees. Act XI. 1835, sect. 4.

Such originals may be inspected, and copies taken.

Copy of such declaration to be sufficient proof of the identity of the printer or publisher.

3716*c*. In any legal proceeding whatever, as well civil as criminal, the production of a copy of such a declaration as is aforesaid, attested by the seal of some court empowered by this Act to have the custody of such declarations, is to be held (unless the contrary be proved) to be sufficient evidence, as against the person whose name is subscribed to such declaration, that the said person was printer, or publisher, or printer and publisher (according as the words of the said declaration may be), of every portion of every periodical work

whereof the title corresponds with the title of the periodical work mentioned in the said declaration. Act XI. 1835, sect. 5.

3716*d*. Provided always that any person, who has subscribed any such declaration as is aforesaid, and who subsequently ceases to be the printer or publisher of the periodical work mentioned in such declaration, may appear before any magistrate and make and subscribe in duplicate the following declaration: "I, A. B. declare that I have ceased to be the printer (or publisher, or printer and publisher) of the periodical work entitled——." And each original of the latter declaration is to be authenticated by the signature and seal of the magistrate before whom the said latter declaration has been made; and one original of the said latter declaration is to be filed along with each original of the former declaration. And the officer in charge of each original of the latter declaration is to allow any person applying to inspect that original on payment of a fee of one rupee, and is to give to any person applying a copy of the said latter declaration, attested by the seal of the court having custody of the original, on payment of a fee of 2 rupees. And in all trials in which a copy, attested as is aforesaid, of the former declaration has been put in evidence, it is lawful to put in evidence a copy, attested as is aforesaid, of the latter declaration; and the former declaration is not to be taken to be evidence that the declarant was, at any period subsequent to the date of the latter declaration, printer or publisher of the periodical work therein mentioned. Act XI. 1835, sect. 6.

How persons, who have signed such declaration, may relieve themselves of the responsibility by making certain declaration; which is to limit the period during which the former declaration is sufficient proof of the identity of the printer or publisher.

3716*e*. Every book or paper printed within the territories of the British government in India is to have printed legibly on it the name of the printer and of the publisher, and the place of printing and of publication: and whoever prints or publishes any book or paper otherwise than in conformity with this rule is, on conviction, to be punished by fine to an amount not exceeding 5,000 rupees, and by imprisonment for a term not exceeding 2 years. Act XI. 1835, sect. 7.

Penalty for printing book not bearing legibly the name of the printer and publisher, and the place of printing and publication.

3716*f*. No person is, within the territories of the British government in India, to keep in his possession any press for the printing of books or papers, who has not made and subscribed the following declaration before the magistrate of the jurisdiction wherein such press is: "I, A. B. declare that I have a press for printing at ——— :" and this last blank is to be filled up with a true and precise description of the premises where such press is. Whoever keeps in his possession any such press without making such a declaration is, on conviction, to be punished by fine to an amount not exceeding 5,000 rupees, and by imprisonment for a term not exceeding 2 years. Act XI. 1835, sect. 8.

Declaration to be made on establishment of press for the printing books or papers.

Penalty for breach of this rule.

3716*g*. Any person who, in making any declaration under the authority of this Act, knowingly affirms an untruth, is, on conviction thereof, to be punished by fine to an amount not exceeding 5,000 rupees, and imprisonment for a term not exceeding 2 years. Act XI. 1835, sect. 9.

Punishment for affirming an untruth in any such declaration.

3716*h*. It is imperative upon a magistrate, under the above provisions, to sentence any person convicted of a breach of them to imprisonment in addition to fine. If the fine is not

In all such cases imprisonment must be adjudged in addition to fine.

* *v para.* 1848. paid, it is to be levied under Act II. 1839,* and is not commutable to a further period of imprisonment. Const. No. 1325.

Annual return of printing presses.

3716*i*. The magistrate is to furnish annual returns in the forms given in appendix F, Nos. 20 and 21. They are to include every printing press at which any periodical work or any book, or pamphlet, in any vernacular or Oriental language, has been printed or published during the year. The magistrates will probably have no difficulty in making up the returns, as the printer and publisher of every periodical work, and the owner of every printing press, is required by law to make declaration of the same before a magistrate; and it is not likely that such persons will be otherwise than willing to furnish all information required for statistical purposes. In those districts in which there are no presses, from which periodical or other works in any dead or living Oriental language issue, a remark to that effect will be sufficient. C. O. Sup. Pol. *L. P.* No. 5 of 1853.

SECTION IV.

OF LOTTERIES AND GAMBLING.

Lotteries are illegal.

3717. In the territories subject to the government of the East India Company, all lotteries not authorized by government are to be deemed common and public nuisances, and against law. Act V. 1844, sect. 1.

Penalty for keeping an office for drawing of lotteries or for allowing such to be drawn in the house.

3718. No person is to keep in the said territories, publicly or privately, any office or place for the purpose of drawing any lottery not authorized by government, or to have any such lottery drawn, or knowingly to suffer any such lottery to be drawn in his or her house; and any person so offending is, for every such offence, upon conviction before a justice of the peace or magistrate, to be punished by fine not exceeding 5000 rupees. Act V. 1844, sect. 2.

Penalty for taking part in any lottery, or publishing any proposal for such purposes.

3719. No person is, under any pretence, device, or description whatsoever, to agree to pay any sum, or to deliver any goods, or to do or forbear doing any thing for the benefit of any person, whether with or without consideration, on any event or contingency relative or applicable to the drawing of any ticket, lot, number, or figure in any such lottery; or to publish any proposal for any of the purposes aforesaid; and any person, offending in any of the matters mentioned in this section, is for every such offence, upon conviction before a justice of the peace or magistrate, to be punished by fine not exceeding 1000 rupees. Act V. 1844, sect. 3.

Disposal of such fines.

3720. Every fine, which is incurred under the provisions of this Act, is to be applied, one half to the use of government, and the other half to the use of the informer or informers. Act V. 1844, sect 4.

Gambling how far cognizable by magistrate.

3721. There is no specific enactment in the regulations by which persons found playing in gambling houses are punishable by the magistrate. He should therefore, in any case of doubt, take a futwa from the law officer, and proceed in conformity with his exposition of the Mahomedan law.(*a*) Const. No. 891.

(*a*) It is said in the chapter of the Hedaya "Of Kirahceat or abominations," that "it is abominable (makrooh) to play at chess, dice, or any other game; for if any thing be staked it is gambling, which is expressly prohibited in the koran; or if, on the other hand, nothing be hazarded, it is useless and vain. Besides, the prophet has declared all the entertainments of a Mussulman to be vain excepting three; the breaking in of his horse; the drawing of his bow; and the playing and amusing himself with his wives. Several of the learned, however, deem the game of chess to be allowed, as having a tendency to quicken the understanding; which opinion has also been ascribed to Shafei, and Malik." The word "makrooh" here used is taken to apply to anything, "which in its qualities nearly approaches to unlawful, without being actually so." But it is also said in the chapter "Of evidence" that "the testimony of a person who plays for a stake at dice or chess is inadmissible, because the gaming in that manner is ranked in the number of great crimes." The prohibition of gaming is deduced from the saying of the prophet, "whoever plays at chess or dice does, as it were, plunge his hand into the blood of a hog." *Hed. Trans. vol.* 2, *page* 688; *and vol.* 4, *page* 122.

All wagers are null and void; and are not to be enforced in the courts.

3722. All agreements, whether made in speaking, writing, or otherwise, by way of gaming or wagering, are to be null and void: and no suit is to be allowed in any court of law or equity for recovering any sum of money or valuable thing alleged to be won on any wager or entrusted to any person to abide the event of any game, or on which any wager is made. Act XXI. 1848, sect. 1.

SECTION V.

OF THE SALE OR EXPOSURE OF OBSCENE BOOKS AND PICTURES.

Penalty for the sale or exposure of obscene books, pictures, &c.

3723. Whoever, within the territories in the possession and under the government of the East India Company, in any shop, bazar, street, thoroughfare, high-road, or other place of public resort, distributes, sells, or offers, or exposes for sale, or wilfully exhibits to public view, any obscene book, paper, print, drawing, painting, or representation; or sings, recites, or utters any obscene song, ballad, or words, to the annoyance of others; shall upon conviction, as hereinafter provided, before a magistrate, be liable to a fine not exceeding 100 rupees, or to imprisonment, with or without hard labor, for a period not exceeding three months, or to both. Act I. 1856, sect. 1.

Apprehension of offenders.

3724. It shall be lawful for any person whatsoever to apprehend any person found committing any of the above-named offences, and forthwith to deliver him to a police officer of the place where he shall have been apprehended, to be taken before any magistrate having jurisdiction in such place; and it shall be the duty of every police officer to use his best endeavours to apprehend and to convey before a magistrate any person that he shall find so offending, together with such obscene books, papers, prints, drawings, paintings, and representations, as may be found with such person. Act I. 1856, sect. 2.

Mode of procedure by magistrate.

3725. Upon information given or charge preferred, upon oath or solemn affirmation, a magistrate, within whose jurisdiction the offence may have been committed, may issue a summons for the appearance, or a warrant for the apprehension, of any person accused of any of the offences enumerated in section 1, and such magistrate shall proceed under the rules of the general law to hear and determine the case. Provided that it shall not be necessary to require the presentation of a complaint in writing, nor to require the attendance of any complainant, any thing contained in sect. 6, Reg. IX. 1807* or any other law to the contrary notwithstanding. Act I. 1856, sect. 3.

* *See para.* 546.

Magistrate required to seize and destroy obscene books, &c.

3726. Every magistrate is required to destroy, or cause to be destroyed, all such obscene books, papers, prints, drawings, paintings, or representations, as may come within his power or control. Act I. 1856, sect. 4.

Importation of obscene books, pictures, &c., prohibited.

3727. After the passing of this Act, it shall not be lawful for any person to import into any part of the aforesaid territories any obscene book, print, or picture; and every such book, print, or picture shall be forfeited and shall be seized by any officer of customs, and the same shall be destroyed by such officer. Act I. 1856, sect. 5.

Appeals from orders or sentences passed under this Act.

3728. All orders or sentences passed under this Act shall be appealable in the usual manner under the regulations and laws that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of a magistrate. Act I. 1856, sect. 6.

Act not to apply to representations in temples, &c.

3729. Nothing contained in this Act shall apply to any representation sculptured, engraved, or painted, on or in any temple, or on any car used for the conveyance of idols. Act I. 1856, sect. 7.

Conviction to be quashed on merits only. Form of conviction, &c.

3730. No conviction, order, or judgment of any justice of the peace shall be quashed for error of form or procedure, but only on the merits; and it shall not be necessary to state on the face of the conviction, order, or judgment, the evidence on which it proceeds; but the depositions taken, or a copy of them, shall be returned with the conviction, order, or judgment, in obedience to any writ of *certiorari;* and if no jurisdiction appears on the face of the conviction, order, or judgment, but the depositions taken supply that defect, the conviction, order, or judgment shall be aided by what so appears in such depositions. Act I. 1856, sect. 8.

Interpretation.

3731. The following words in this Act shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say):—The word "magistrate" shall include joint magistrates and persons lawfully exercising the powers of a magistrate and justices of the peace. Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number. Words importing the masculine gender shall include females. Act I. 1856, sect. 9.

SECTION VI.

OF AFFRAYS.(a)

Vernacular terms.

3732. The word "affray," in all criminal proceedings, is to be rendered "khanahjungee" (in Bengalee "danga hangama"); and the term "hangama" is to be restricted to indicate a riot or tumultuous assembly. C. O. No. 37 of vol. 3.

Definition of riot.

3733. As it is not clear what amounts to a riot in Mahomedan law, and no definition is to be found in any of our own authorities, the court adopted the following definitions

(a) The term "affray" has a much more extended signification in this code than that assigned to it in English law, and seems to include not only the *affray*, but also the *riot*, *rout*, and *unlawful assembly*, and perhaps some other offences, of that code. The *riot*, *rout*, *and unlawful assembly* appear to differ only as to the execution of, or motion to execute, the purpose intended; and may be defined to be—a tumultuous disturbance of the peace by 3 or more persons, assembling together of their own authority, with an intent mutually to assist one another against any one who should oppose them in the execution of some enterprize of a private nature, involving some circumstance of actual force or violence, or at least an apparent tendency thereto, *in terrorem populi*, but not necessarily involving any act of personal violence. The *affray* in the English legal sense is taken for a public offence to the terror of the people. There may be an *assault*, which will not amount to an *affray*, as when it happens in a private place out of the hearing or seeing of any except the parties concerned; and there may be an *affray* which does not amount to a *riot*, as when a sudden disturbance occurs between people who have met together on a lawful occasion. An *affray* may be committed by 2 persons, a *riot* by not less than 3. No quarrelsome or threatening words whatever amount to an affray. *Russell and Archbold.*

taken from the fifth report of the English law commissioners. "If three or more persons assemble together for the purpose of executing some unlawful and violent act, or any act whatsoever under such circumstances of violence, threats, tumult, numbers, display of arms, or otherwise as are calculated to create terror and alarm, and shall wholly or in part execute such purpose." "But it is not a riot, where three or more persons being assembled together for any lawful purpose happen, on a sudden quarrel, to commit a breach of the peace, however violent, for their meeting was innocent and lawful, and the subsequent breach of the peace happened unexpectedly, without any previous intention concerning it. In such an affray, only those are guilty who actually engage in it." Reports *L.P.* 1852, part 2, page 882.

Magistrate warned against superficial investigation, and the connivance of the police and amlah with the zumeendars.

3734. The court warn the magistrates against a superficial investigation of the causes of affrays, and against the connivance of the police officers and amlah with the landholders, who are generally the instigators of affrays. They observe that, if an affray takes place near a thana without any exertion of the darogah to prevent it by timely interposition or notice to the magistrate, there must be a presumption against him of gross neglect, or corruption and collusion. And they direct therefore the vigilant attention of magistrates to the conduct of the police officers, zumeendars, and amlah, and require their prompt interposition, not only to prevent the immediate mischief, but also to determine the right of possession to the land, which is the subject of dispute.* The truth of the case will be best ascertained by witnesses unconnected with either of the parties. C. O. No. 50 of vol. 1.

* *v. para.* 3783 *et seq.*

Duties of Police.

To be present at fairs, &c.

3735. The darogahs of police are to proceed in person, or to depute one or more of their officers, as circumstances may require, to attend and maintain the peace at fairs, and during the celebration of festivals, at all places where any considerable number of persons are collected together. Reg. XX. 1817, sect. 18, cl. 1.

The darogah, mohurir, or jemadar, is immediately to proceed to the spot, on receiving intimation; and is first to require the landholder to disperse the disputants;

3736. On receiving intimation of any tumultuous meeting or assemblage of persons, or of any projected riot or serious disturbance, whether arising from trespass or disputes regarding land, crops, tanks, watercourses, reservoirs, or other causes, the darogah is either to proceed in person, or to cause the mohurir, or jemadar, to repair immediately to the spot; and the police officer, employed on such duty, is, in the first instance, to proceed to the residence of the zumeendar, talookdar, or farmer, in whose estate or farm the disputants are said to be, and to require him instantly to cause them to disperse. Reg. XX. 1817, sect. 18, cl. 2.

then to try to persuade them to have recourse to arbitration or law;

then to warn them of the consequences;

then to strive to seize the leaders;

then to collect evidence regarding the parties;

and lastly to set people to watch,

3737. In the event of this measure proving insufficient, he is to endeavour to prevail on the parties to disperse, and either to adjust their differences among themselves by arbitration or panchayat, or to have recourse to a court of judicature for the decision of their claims. In the event of such endeavours proving fruitless, the police officer, who is present, is to declare aloud that if any person is killed, wounded, or violently beaten, all persons concerned in the affray will be brought to trial before the criminal courts. The police officers are at the same time to strive to seize the leaders, or principal offenders; and in the event of their failing so to do, they are to endeavour to ascertain their names and places of abode, and to collect sufficient evidence, if practicable, from persons unconnected with the parties, of the circumstances of the affray, the causes which led to it, and who were the first aggressors; and, after taking these steps, they are to set people to watch the further

proceedings of the parties, and immediately to communicate the whole of the particulars to the magistrate, who is to adopt the necessary measures for bringing the offenders to condign punishment. Reg. XX. 1817, sect. 18, cl. 3.

and to report to the magistrate.

3738. The officers of police are required to proceed to the spot as above directed, and to use every precaution to prevent affrays; but they are to confine themselves to maintaining the peace, and are on no account to take part with or to afford assistance to either side in the dispute; and darogahs are strictly prohibited, unless under the special instructions of the magistrate, from deputing burkundazes, or muzkooree peons, to defend the property of either party applying for the aid of the police on the ground of alleged apprehension of affray. Reg. XX. 1817, sect. 18, cl. 4.

Police officers are not to assist either side; nor are burkundazes or peadahs to be deputed to protect property.

3739. If the cause of dispute is land or crops, the darogah, in his report to the magistrate, is to describe the land contested, or the quantity or quality of the grain; and in boundary disputes, where the claims of individuals may be better explained by a plan of the ground, he is to prepare and transmit, with his report, a sketch showing the outline and general position of the portions of land claimed by the contending parties. Reg. XX. 1817, sect. 18, cl. 5.

Darogah, in his report, is to describe the land or crops in dispute.

Trial.

3740. It is not necessary that in every case of affray both parties should be committed for trial. Const. No. 778.

Both parties need not be tried.

3741. Affray not being enumerated in cl. 1, sect. 3, Reg. X. 1824*, as one of the offences in which a magistrate is authorized to tender a pardon to the persons concerned, the evidence of participators in a case of affray is not admissible against other individuals, implicated in the same offence. Const. No. 535. But parties who were themselves implicated in the affray, but have been released by the magistrate, may be admitted as witnesses. Reports *W. P.* 1856, part 1, page 31.

Participators cannot be admitted as approvers.

* *v. para.* 403.

3742. All parties actually present and taking part in a disturbance or breach of the peace, should be charged as principals. The term accomplice is inapplicable in such a case. Reports *W. P.* 1855, part 1, page 639.

There are no accomplices in an affray.

3743. The discrepancy of the evidence of the two parties in an affray affords no ground for the acquittal of those charged with being concerned therein: credit must be given to that evidence which appears best supported by the circumstances of the case. N. A. R. vol. 3, page 221.

Evidence to be balanced.

3744. In an outbreak and riot attended with homicide which occurred during the procession of the mohurrum, it was held that as the presence of the Mahomedans, however great may have been their number, was not a criminal presence, and as there was nothing illegal in the ceremony in which they were engaged, therefore those only, who could be shown to have been guilty of any overt act, or in other words to have taken an active part in the riot, were liable to punishment. Reports *W. P.* 1856, part 1, page 176. Proof of the mere presence of certain persons on the spot during a riot is not sufficient to warrant conviction. It is requisite in such cases that it be proved that the prisoners took an active part in the proceedings of the rioters. Reports *W. P.* 1854, part 1, page 557.

Where presence is not criminal, active participation must be shown;

or that the force used in resisting was greater than was requisite.

3745. In a trial for riot with homicide, which arose from the attempt of the servants of an indigo factory to sow lands by force, the court held that the only question was, whether the force used by the villagers to resist and drive away the factory people was so much greater than the occasion required, that it cannot be pleaded in justification of their acts. Reports *L. P.* 1855, part 2, page 767.

But each participator is responsible for the whole result.

3746. But where a man is the acknowledged adherent of one of the parties engaged in the affray, and it is shown that he joined in it with the object of attacking or resisting the force opposing the party, it is a matter of no consequence whether he struck the person killed in self-defence or not. His overt acts, as a party concerned, render him responsible for the whole result of the encounter. Reports *L. P.* 1855, part 2, page 424.

The party in the wrong cannot be held responsible for homicide of persons on their own side.

3747. In an outbreak in jail where the sepoys were obliged to fire on the convicts in order to check their attack upon the authorities, and one man was killed and others wounded, it was ruled that the prisoners could not be held legally responsible for the homicide or wounding, although it necessarily arose from the acts of the prisoners. Reports *L. P.* 1855, part 2, page 641.

Parties opposing the entry of a purchaser of a putnee talook are to bear the entire responsibility of a consequent breach of the peace.

3748. Should the late incumbent of a putnee talook, or his late under-tenants, continue to oppose the entry of the new purchaser, notwithstanding the issuing of a proclamation by the civil court declaring the just rights of the latter (for which he is at liberty to apply on meeting with opposition), or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police officers, and of all public officers, who are at hand and capable of affording assistance, is to be given to the new purchaser on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility is to rest with the party opposing the lawful attempt of the purchaser to assume his rights. Reg. VIII. 1819, sect. 15, cl. 3.

Officer serving process is not bound to show his warrant unless demanded.

3749. In a case where an affray was the consequence of an attachment of property made by a peon under the order of a moonsiff, the court held that the officer serving the process is not necessarily bound to exhibit the warrant upon which he acts, if no demand is made for a sight of it. N. A. R. vol. 4, page 251.

Resistance to a legal process irregularly served, is a misdemeanor.

3750. Resistance offered by a farmer to persons legally authorized to distrain his effects, is a criminal act and punishable by imprisonment, notwithstanding that the distress be levied in an irregular manner, as the farmer always has it in his power to gain redress by an application to a court of justice.*(a)* N. A. R. vol. 1, page 302.

Recourse to violent means, either for enforcing or resisting disputed claims, is a misdemeanor.

3751. It is no ground for a total remission of punishment that the accused were not of the aggressing party in an affray; as, by the rule established in the preamble of Reg. XLIX. 1793,*(b)* the having recourse to violent means either for enforcing or resisting disputed claims, is not only highly criminal but unnecessary, from the parties having it at

(*a*) In English law the legality or illegality of the act intended to be done is not material, if there be violence and tumult. *Russell.*

(*b*) This is the original law for preventing affrays respecting disputed boundaries; but it has been repealed, as well as Reg. XV. 1824, by Act IV. 1840.

all times in their power to obtain redress by application to the courts of judicature: but the nizamut adawlut, in awarding punishment, may admit the circumstance to operate in mitigation. N. A. R. vol. 2, page 339.

Persons, profiting by an affray, cannot be punished without proof of instigation or connivance.

3752. It would be illegal to punish the person who profited by an affray, unless there were proofs that the person so punished had been guilty of instigating or conniving at it. Mere suspicion of instigation or connivance cannot warrant the infliction of punishment. Const. No. 619. C. O. No. 63 of vol. 2.

Magistrate's powers.

Intent to commit.

3753. The act of assembling armed men, or taking other unlawful measures, with the evident intention of committing a breach of the peace, is an offence punishable by the magistrate as a misdemeanor under the discretionary powers vested in him by sect. 19, Reg. IX. 1807.* This is ruled in accordance with the Mahomedan law as well as the tenor of cl. 1, sect. 2, Reg. IV. 1825.(*a*) Const. Nos. 132 and 664.

* *v. para.* 705.

Inconsiderable affrays.

3754. Inconsiderable affrays are classed among the petty offences, which the magistrate is competent to punish under sect. 8, Reg. IX. 1793, for which see paras. 703 and 3827.

Affrays regarding land, or crops, if unattended with homicide, severe wounding, or other aggravating circumstance, are in the competence of the magistrate.

3755. All persons charged with being concerned in affrays as defined in Reg. XLIX. 1793 (*Ced. Prov.* Reg. XXXII. 1803) [*i. e.* when any person having a claim to any disputed land, or crops, in the possession of another, attempts to possess himself of such land or crops by force] are, upon due proof of the offence, provided the affrays be unattended with homicide, severe wounding, or other aggravating circumstance, punishable by the magistrate or joint magistrate of the district, in which the affray has occurred, without commitment to the sessions court. Reg. I. 1822, sect. 3.

Punishment in such cases.

3756. In such cases the magistrate is competent to punish the offender by imprisonment, with or without labor,(*b*) for a period not exceeding one year, and a fine not exceeding 200 rupees, commutable if not paid to a further period of imprisonment not exceeding one year, so that the whole period of imprisonment in no case exceeds two years. Reg. VIII. 1828, sect. 3.

This refers only to affrays regarding lands or their produce.

3757. The above provisions are applicable only to cases of affrays regarding lands and their produce; and cannot be made to apply to other cases of affray from whatever cause arising. Const. No. 1154.

Corporal punishment.

Affrays not to be referred to assistant not vested with special powers.

3758. It is not competent to a magistrate or joint magistrate in any case of affray to award corporal punishment [and therefore no additional imprisonment in lieu thereof]; nor is a magistrate to refer any such case for examination and decision to his assistant, unless such assistant is invested with the special powers designated in sect. 2, Reg. III. 1821. Reg. I. 1822, sect. 4.

Sentence of labor in such cases.

3759. The power vested in a magistrate by the above provisions of awarding labor during the original term of imprisonment, must be considered to extend equally to the further

(*a*) This regulation contains the rules for requiring recognizances and security for keeping the peace; and the clause cited mentions incidentally the above offence as one cognizable by the criminal courts: see para. 3830.

(*b*) Under sect. 3, Reg. II. 1834, fetters cannot be adjudged in such cases, and the prisoner must be allowed the option of commuting the labor by the payment of a specified fine: see para. 1360.

period of imprisonment adjudged in default of payment of the fine imposed; subject, of course, as regards both periods to the rule laid down in cl. 1, sect. 3, Reg. II. 1834.* Const. No. 972.

* *v. para.* 1360.

Limit of imprisonment.

3760. A magistrate is not competent, under the above provisions, to sentence a prisoner convicted of affray at once to two years' imprisonment. The period in addition to one year is awardable only in default of payment of a certain fine. Const. No. 774.

Security may be required in addition to above sentence.

3761. Reg. VIII. 1828 does not in any way interfere with the power vested in magistrates by Reg. IV. 1825 [to require security to keep the peace]. Under this construction a magistrate is competent to punish to the full extent of the power conveyed by the above provisions, and in addition to such sentence to require the prisoner to furnish security, or be imprisoned for a year in default: the whole term of imprisonment not exceeding three years, if the demand for security is not complied with. Const. No. 1290.

If attended with *slight* wounding.

3762. Under the terms of sect. 3, Reg. I. 1822, an affray attended with *slight* wounding lies within the competence of the magistrate. Const. No. 423.

In cases of wounding the instrument of offence is immaterial.

3763. In supersession of Const. Nos. 623 and 628 (by which cases of affray attended with wounding, if the wounds were inflicted by a sword, were ruled to be beyond the competence of a magistrate) it is declared that a magistrate is empowered, in such cases, to commit or punish, as he may judge most expedient, without regard to the instrument of offence, and with reference solely to the nature and extent of the injuries inflicted by the aggressors. C. O. No. 53 of vol. 3, para. 4.

Cases in which the servants of an indigo factory have been engaged.

3764. Under orders of government, the magistrates are required to submit to the commissioners of circuit, for their examination, every case of violent affray, attended with aggravating circumstances, in which the servants of an indigo factory have been engaged, whether the European at the head of the establishment has been included in the charge or not. The commissioner of circuit is to furnish with his annual report, in his capacity of superintendent of police, a specific statement of such cases. C. O. No. 22 of vol. 2.

Case to be committed if attended with homicide, severe wounding, or aggravating circumstances.

3765. In all cases of affray, attended with homicide, severe wounding, or other aggravating circumstance, the magistrate is to bring the offenders to trial before the sessions court, committing them to prison, or enlarging them upon bail, as the circumstances of each case appear to require. Reg. I. 1822, sect. 5.

Power of session judge.

Minimum of sentence.

3766. Whenever any person committed for trial to the sessions court, on a charge of affray attended with homicide, is convicted by the law officer with the concurrence of the session judge of such offence, it is not competent to the session judge to sentence the person so convicted to a less term of imprisonment than five years from the date of such sentence, with or without labor. Reg. II. 1823, sect. 2.

If such sentence appears too severe, trial to be referred.

3767. Whenever, with regard to any person or persons so convicted, the session judge is of opinion that the punishment above stated is more than adequate to the offence, he is to issue no sentence in the trial, but is to refer the case for the sentence of the nizamut adawlut, setting forth at large in his letter of reference the grounds on which he applies for a mitigation. Reg. II. 1823, sect. 3.

Maximum of sentence.

3768. Nothing in this regulation [*i. e.* in the two preceding paragraphs] is to be construed to alter the existing rules, by which a session judge is competent, in such cases, to pass a sentence of 7 years' imprisonment with or without the addition of labor; or those by which, where he considers even that punishment to be inadequate to the offence, he is authorized to refer the trial for a still heavier punishment to the nizamut adawlut.(*a*) Reg. II. 1823, sect. 4.

Corporal punishment, or imprisonment in lieu thereof, not to be adjudged.

3769. So much of Reg. II. 1823, or of any other regulation in force, as authorized the courts of circuit to adjudge corporal punishment by stripes in cases of affray, was rescinded by sect. 2, Reg. XII. 1825. And it is held by the nizamut adawlut that additional imprisonment, in lieu of corporal punishment, cannot be awarded on conviction of offences not punishable by stripes before the passing of Reg. II. 1834. N. A. R. vol. 6, page 1.

Restriction of application of rule regarding minimum of punishment. It does not refer to unpremeditated cases, or to persons resisting aggression on property under their charge.

3770. The minimum of punishment in cases of affray attended with homicide, established by the above provisions, is to be considered to apply to such cases only, in which both parties are found guilty of having had resort, by premeditation, to that mode of adjusting their differences;—and is not to be deemed applicable to cases arising out of a sudden quarrel, in which no premeditated purpose of affray is established;—nor to assaults or other aggressions in which the assailed party is not shown, by their previous preparation, or in any other way, to have been ready and intent to meet their adversaries in the field of combat;—nor is it to be construed to apply to cases of affray attended with homicide, in which persons guarding and protecting crops, grain, or property, in a legal manner, are attacked by persons trespassing, or others, or who, in legal and just defence of the property under their charge, resist aggression in self-defence. In all such cases the session judges, agreeing with the futwas of their law officers, are to pass such legal sentence as is suitable to the offence of the several parties, the same as if Reg. II. 1823 had no existence. Reg. VI. 1828, sect. 2.

Judge to state in such case that the affray was unpremeditated.

3771. With reference to the above rules, the nizamut adawlut direct, that, whenever in cases of affray attended with homicide a sentence of less than five years' imprisonment is awarded, the session judge should invariably insert in his remarks on the trial that the affray was not premeditated on both sides. C. O. No. 178 of vol. 3.

Precedents.

Mahomedan law.

Affray with homicide;

3772. The nizamut adawlut would not recognize the distinction made by the Mahomedan law between him who is proved to have struck the deceased in an affray, and those present aiding and abetting.(*b*) [But this dictum appears to be superseded in practice by subsequent decisions; see paras. 3774 and 3775.] In this case all the prisoners were sentenced to five years' imprisonment. N. A. R. vol. 1, page 299.

instigating but not present;

3773. The prisoner, though there was no proof that he was actually present, was convicted of having instigated and directed an affray attended with homicide and

(*a*) The latter part of this section was repealed by cl. 1, sect. 7, Reg. XII. 1825; but, as that provision has been superseded by sect. 6, Act XXXI. 1841, the rule given in the text is still extant.

(*b*) Any person taking part in a riot, whether by word, sign, or gesture, or by wearing the badge of the rioters, is himself a rioter; for in this case all are principals. *Russell.*

wounding; and was sentenced to imprisonment in banishment for life. N. A. R. vol. 1, page 8.

w ith homicide and w ounding;

3774. Affray attended with homicide and wounding; the prisoners, who inflicted the wounds and were most active, were sentenced to 10 years', the instigators and leaders to 7 years,' and the remainder to 5 years' imprisonment, all with labor and irons. N. A. R. vol. 2, page 370. Where it was proved that the one party were the instigators and had caused the affray by oppressive conduct, they were sentenced for 14, 10, and 5 years, while the leaders on the other side were imprisoned for 4 years only. N. A. R. vol. 6, page 179. Where the ryots, the assailants, had been provoked by ill-usage, and had suffered severely in the affray, they were sentenced, the principal leader to 2 years,' and the others to 1 year's imprisonment with fine in lieu of labor. N. A. R. vol. 6, page 220.

with homicide;

3775. Affray with homicide; the prisoner who killed the deceased was sentenced to 10 years,' four others to 7 years,' and one to 3 years' imprisonment with labor and irons; one prisoner, in consideration of his youth, was sentenced to the mitigated punishment of imprisonment for one year. N. A. R. vol. 2, page 381. Affray with homicide: sentence, imprisonment for 5 years. N. A. R. vol. 3, page 221. Affray with homicide, under circumstances of mitigation: sentence, imprisonment for 2 years. N. A. R. vol. 2, page 339. Affray in which a havildar died from the effects of the blows, the affray having been produced by the misconduct of the sepoys: two youths who were present were sentenced to imprisonment for one year. N. A. R. vol. 2, page 492. A prisoner convicted of having been present, so as to encourage and support, though he did not take an active part in, an affray with homicide, was sentenced to imprisonment for 2 years with labor and irons. Reports *L. P.* 1851, page 567.

with wounding;

3776. Affray attended with wounding: the court adverting to the respectability of one of the ringleaders remitted imprisonment, and sentenced the parties to pay fines according to their respective degrees of guilt; viz. the ringleader on one side a fine of 300 rupees, and his party a fine of 10 rupees each, or imprisonment for 3 months; the ringleader on the other side a fine of 10 rupees, and his party a fine of 5 rupees each, or imprisonment for one month. N. A. R. vol. 3, page 141. Affray attended with wounding; sentence, four of the principals to 5 years' imprisonment, and five accessaries to 3 years' imprisonment. N. A. R. vol. 3, page 273.

with plunder, wounding, and abduction of persons thereafter missing.

3777. Affray attended with aggravating circumstances, the prisoners having made a violent attack upon a village, rifled certain houses, slightly wounded several persons, and violently abducted others thereafter missing: sentence; the ringleader to 12, the two principals to 10, and the others as inferior agents to 7 years' imprisonment with labor in irons. N. A. R. vol. 5, page 21.

Case in which defence was held justifiable.

3778. A party defended his house against a wanton and unprovoked assault, during which two of the assaulting party were killed. Held that the homicide was justifiable on the part of those who acted on the defensive; and the aggressors were sentenced to 5 years' imprisonment. N. A. R. vol. 5, page 15.

In resistance of civil process, with murder;

3779. Affray with murder in resistance of civil process: the leaders were sentenced to imprisonment for life in Alipore jail; three most actively concerned to imprisonment for 14 years, and the rest to imprisonment for 7 years, all with labor in irons. N. A. R. vol. 2, page 387. Affray in resistance of civil process: sentence; the instigator to imprisonment for one year, and three others to imprisonment for 6 months. N. A. R. vol. 1, page 302. Affray with homicide in resistance of civil process: sentence, one to imprisonment for 14 years, and two others for 7 years. N. A. R. vol. 4, page 251.

unaggravated;

with homicide;

Riot and insurrection in jail.

3780. The prisoners, convicts, convicted of riot and insurrection in jail, attended with severe wounding of the jail darogah, and causing the authority of the magistrate and the session judge to cease in the jail for six days, were sentenced, the leader to imprisonment with labor and irons in transportation for life; and the others to imprisonment with labor and irons in banishment for 14 years. N. A. R. vol. 6, page 61. See other cases in paras. 2752 *et seq.*

SECTION VII.

OF THE PREVENTION OF AFFRAYS REGARDING LAND, AND OF SUMMARY SUITS IN CASES OF FORCIBLE DISPOSSESSION.

General applicability of the provisions of Act IV. 1840.

3781. With reference to the very general terms of Act IV. 1840, the nizamut adawlut hold that its applicability cannot be confined within the narrow circle of Reg. XV. 1824, which has been repealed by the present law, by which it is evidently intended to empower the magistrates to enquire into disputes relating to the possession of lands, of which before the passing of that enactment they were not competent to take cognizance. This resolution was recorded in order to supersede various constructions of Reg. XV. 1824, which restricted the interference of the magistrate to cases of dispossession or disputed possession in which the proprietors of the land were engaged, declaring it inapplicable to cases in which ryots or under-tenants disputed the right of cultivation only. C. O. No. 124 of vol. 3.

British born subjects as well as others amenable.

3782. The provisions of Act IV. 1840 are applicable to persons of every class or description, whether British-born subjects or others. Act IV. 1840, preamble.

Magistrate how to proceed on being certified of a dispute regarding land, &c. likely to induce a breach of the peace.

3783. Whenever a magistrate is certified, that a dispute likely to induce a breach of the peace exists concerning any land, premises, water, fisheries, crops or other produce of land, within the limits of his jurisdiction, he is to record a proceeding stating the grounds of his being so certified, and is to call on all parties concerned in such dispute (whether proprietors, dependent talookdars, farmers, under-farmers, ryots, or other persons) to attend his court in person, or by agent, within a reasonable time, and to give in a written statement of their respective claims as respects the fact of actual possession of the subject of dispute. And the magistrate is, without reference to the merits of the claims of any party to a

The party who was in possession

at the commencement of the dispute to be kept in possession.

right of possession, to proceed to inquire what party was in possession of the subject of dispute when the dispute arose; and, after satisfying himself upon that point, is to record a proceeding declaring the party whom he decides to have been in such possession to be entitled to retain possession, until ousted by due course of law, and forbidding all disturbance of possession until such time: and if necessary the magistrate is to put such party into possession, and to maintain him in possession, until the rights of the parties disputing be determined by a competent court. Act IV. 1840, sect. 2.

Meaning of the term "certified."

3784. In a case where a person complained, not of a completed forcible dispossession, which would have brought the case under section 4, but of an interference, and probable other encroachments, which were likely to lead to a breach of the peace, and the police were directed to make enquiries, their report was held to be quite a sufficient ground for the magistrate to be "certified" of the dispute, so as to authorize his proceeding under section 2. Any thing by which a magistrate can be certified is enough. Letter of N. A. to Judge of Jessore, No. 357, April 8, 1853.

Subject of dispute to be attached if satisfactory proof of possession is not adduced.

3785. If the magistrate, in the cases mentioned in the preceding section, is unable to satisfy himself as to what party was in possession of the subject of dispute when the dispute arose, he may attach the subject of dispute until the rights of the parties be determined by a competent court, giving the collector information of the attachment; and, if the subject of dispute be land, the provisions of Reg. V. 1827 regarding attachment by order of a civil court(*a*) are to apply to attachments by order of a magistrate made under this section. Act IV. 1840, sect. 3.

But attachment is not to be made pending decision of suit.

3786. A magistrate is not authorized to attach lands (paying revenue to government or under-tenures) pending the decision of such case, or to call on the collector to attach lands according to Reg. V. 1827, before he has come to a decision in the case. Const. No. 1347.

The power of attachment can be exercised only in cases instituted under the previous section.

3787. The authority given by section 3 is restricted to the class of cases mentioned in section 2. Orders of attachment cannot issue in cases of complaint under section 4. A complaint of dispossession under section 4, if not proved, must be dismissed, the defendant being left in possession, and the plaintiff referred to the civil court. Letter of N. A. to Judge of Patna, No. 566, May 25, 1849 in C. O. Board of Revenue *L. P.* No. 15, May 30, 1851.

Magistrate how to proceed on receiving complaint that complainant has been forcibly

3788. If any party complains to a magistrate that he has been without authority of law forcibly dispossessed of any land, premises, water, fisheries, crops or other produce of land, within the jurisdiction of such magistrate, whether the same were possessed by such

(*a*) The following is the rule of Reg. V. 1827 in such cases. The court wishing to attach landed property is to issue a precept to the collector of land revenue of the district wherein the land is situated, directing him to hold it in attachment, and to appoint a person for the due care and management of the estate under good and adequate security for the faithful discharge of the trust, in a sum proportionate to the extent thereof. Persons having an interest in the property may appeal to the board of revenue against the person selected as manager by the collector. The precept above-mentioned is to state specifically the property to be included in the attachment; and the attachment is not to be withdrawn without a further precept from the court to that effect.

party as proprietor, dependent talookdar, farmer, under-farmer, ryot, or otherwise, the magistrate is to require the party or parties complained against, and any other parties concerned, to appear and make defence in person or by agent within a reasonable time ; and if after the examination of the necessary witnesses and documents, the complaint appears to him to be substantiated, he is to record a proceeding ordering the party complaining to be put again into possession of the subject of dispute, and maintained in possession until the right to possession be determined by a competent court; provided that no such order is to be passed, unless the party complaining of having been so dispossessed prefers his claim within one month from the time of such dispossession. Act IV. 1840, sect. 4.

dispossessed without authority of law.

Complaint must be lodged within one month.

3789. It has been held by the majority of the two courts that a complainant under sect. 4, Act IV. 1840 cannot be sworn. N. A. R. vol. 6, page 93.

Complainant cannot be sworn.

3790. Absolute proof of actual "forcible" dispossesion is an indispensable condition to the restoration of the party complaining to possession; the mere assertion of an apprehension, that a breach of the peace will ensue, and that dispossession will follow, is insufficient, under the terms of sect. 4 of the Act, to legalize the reception and investigation of such complaints, it being obviously the intention of the law, that the complaint of having been "without authority of law forcibly dispossessed" of the disputed property shall be substantiated "by the examination of the necessary witnesses and documents,"—or, in other words, by the adduction of direct evidence, before any order can legally issue for the re-instatement of the party complaining in possession of the subject of dispute. The several criminal authorities, competent to try and determine suits under Act IV. 1840, are to be careful to observe the legal obligation above recited; and to remember that, in complaints of the nature adverted to, the only point to be established by the complainant is the fact of forcible dispossession. In like manner, the only point to be tried on revision of the case in appeal, is whether such forcible dispossession has been established or not; and any endeavour to ascertain and record "the right to possession" is not only irrelevant, but constitutes in fact an illegal and undue arrogation of authority on the part of the deciding officer: evidence of forcible dispossession carries with it, as a matter of course, proof of antecedent possession, the maintenance of which without reference to right is the object of the law, and the utmost limit of authority conferred by the Act under consideration. Session judges are desired to enforce a strict adherence to the foregoing principles in the decision of such cases, and to correct any departure therefrom which falls under their observation. C. O. No. 200 of vol. 3. *W. P.*

There must be direct evidence of forcible and illegal dispossession;

and this is the only point to be proved: the *right* to possession is not to be considered by the magistrate, or in appeal.

3791. If neither of the parties in a suit [brought into the magistrate's court under either sect. 2 or sect. 4] will appear and produce their evidence and proofs, the magistrate should strike the case off the file, taking such measures as appear necessary to prevent a breach of the peace, extending even to the attachment of the property in dispute if deemed necessary to secure such prevention. Should only one of the parties after due notice attend and produce his proofs, the case should be tried *exparte.* Const. No. 1029.

If neither party produces their evidence and proofs;

or if only one party.

3792. The party wrongfully dispossessed is to be restored to the possession of the land with the crop upon it, although the latter has been sown by the wrongful dispossessor. Const. No. 378.

Standing crops must go with the land.

The ryot who has cultivated the crop of indigo is in possession, and not the planter from whom he has received advances.

3793. A, a ryot, asserting himself to be under engagements to B, an indigo planter, complains that C, another planter who states that he made advances to A, is about forcibly to cut the crop. Held that A being in possession may deliver the disputed plant to either B or C, and that the magistrate, under Act IV. 1840, may prohibit C from attempting to take forcible possession; C having his remedy in the civil court under Reg. VI. 1813 and Act X. 1836. Const. No. 1359.

Possession is retained during absence by locking the door of the house.

3794. The plaintiff having locked up his house at Jaunpore previous to his departure for Benares, his possession must be held to have continued during his absence; and the violent entry by the defendant, effected by forcibly opening a lock, must be considered to constitute a case of forcible dispossession.*(a)* Const. No. 434.

Right of possession of purchaser not acknowledged to exclusion of the mortgagee in possession.

3795. It was held that a magistrate had clearly exceeded his powers in awarding possession to the purchaser of mortgaged property to the exclusion of the mortgagee, on the plea that the mortgage had been redeemed, although the purchaser up to the date of the dispute had never been in possession. Const. No. 393.

Mortgagee retained in possession against the proprietor, till formally dispossessed by civil court.

3796. In a dispute between a proprietor and a mortgagee of an orchard, the magistrate, considering the possession of the latter to have been satisfactorily established, directed him to be maintained in possession. The session judge, on appeal, reversed his decision, and directed the magistrate to maintain the proprietor in possession and to refer the mortgagee to the civil court. The nizamut adawlut held that the course adopted by the magistrate for the maintenance of the mortgagee in possession, till formally dispossessed by the usual process laid down in the regulations, was right. Const. No. 1366.

Disputes between co-partners of an ijmalie estate cannot be tried.

3797. Claims to the money rents of a fractional portion of a joint undivided estate cannot be heard under Act IV. 1840. Such claims can arise only among co-sharers, or the representatives of co-sharers; but when there is a dispute about a distinct and defined portion of *land*, whether between the co-sharers in a village, or between the proprietors of adjoining villages, and as a consequence to the right of management and collection as regards such land, complaints for dispossession may of course be brought under the Act cited. When the lands, to which the dispute relates, can be defined and specified, there is jurisdiction under the Act, but not otherwise. Letter of N. A. August 24, 1849 in C. O. Board of Revenue *L. P.* No. 15, May 30, 1851. Letter of N. A. to Judge of 24-Pergunnahs, No. 470, April 7, 1852.

If lands cannot be specified, there is no jurisdiction.

How far magistrate can interfere in regard to dispossession of moveable property.

3798. In a dispute for the possession of moveable property, the magistrate is competent to interfere, with a view to restitution, only when it has been acquired under circumstances, which would authorize the laying of a direct criminal charge, such as theft, or fraud, or criminal trespass, or the like. If there is no proof of any such violence, or such other illegal act in the acquisition, and the person, with whom it is discovered, has detained it on the plea of some claim or lien on the property, the matter is then one of civil and not criminal cognizance. Const. No. 1349. C. O. No. 64 of vol. 4.

(a) This construction (of Reg. XV. 1824) held that the plaintiff's absence was a sufficient cause for the delay in bringing the suit; but Act IV. 1840 provides that no suit is to be admitted after the expiration of one month from the time of dispossession; and therefore there can be no sufficient cause for delay beyond that period.

Boundary disputes may be determined under these provisions:

3799. A magistrate is competent to determine boundary disputes under these provisions; but he is of course merely to define the boundary of the land, which was in the possession of the party ousted before the dispute arose, leaving the question of right to be determined by the civil court. Const. No. 724.

but not in the Western provinces, where the boundaries have been marked out by the revenue authorities.

3800. Magistrates are prohibited from taking cognizance under Act IV. 1840 of boundary disputes of the nature for which provision is here made [*i. e.* boundaries fixed and marked out in the Western provinces by the revenue authorities, who are likewise required to settle all disputes regarding them]. But whenever the magistrate has reason to apprehend any breach of the peace in consequence of a disputed boundary, he is to certify the circumstances to the collector of revenue, who is bound immediately to mark off the boundary, and to uphold the possession of the parties according to the demarcation. Act I. 1847, sect. 6. *W.P.*

Newly-formed land of which no party has had possession.

3801. If, in cases instituted under this Act, the subject of dispute be newly formed land, whereof it appears to the magistrate that no party has ever had possession, the magistrate is to award possession to the party to whom the right of possession belongs according to law or custom,(*a*) and is to maintain that party in possession, until the right to possession be determined by a competent court. Act IV. 1840, sect. 5.

(*a*) The following are the only rules for the guidance of the courts in disposing of claims to new alluvial formations:—

Claims and disputes relative to alluvial lands to be decided by immemorial and definite usage, when such shall be clearly recognized and established;

Whenever any clear and definite usage of *shikast-paiwast*, respecting the disjunction and junction of land by the encroachment or recess of a river, may have been immemorially established for determining the rights of the proprietors of two or more contiguous estates divided by a river (such as that the main channel of the river dividing the estates shall be the constant boundary between them, whatever changes may take place in the course of the river, by encroachment on one side, and accession on the other), the usage so established shall govern the decision of all claims and disputes relative to alluvial land, between the parties whose estates may be liable to such usage. Reg. XI. 1825, sect. 2.

where no such local usage may be established, by the following rules.

Where there may be no local usage, of the nature referred to in the preceding section, the general rules, declared in the following section, shall be applied to the determination of all claims and disputes, relative to lands gained by alluvion or by dereliction either of a river or the sea. Reg. XI. 1825, sect. 3.

Land gained by gradual accession from the recess of a river or the sea, to be considered an increment to the tenure of the person to whose estate it may be annexed.

When land may be gained by gradual accession, whether from the recess of a river or of the sea, it shall be considered an increment to the tenure of the person to whose land or estate it is thus annexed, whether such land or estate be held immediately from government by a zumeendar or other superior landholder, or as a subordinate tenure by any description of under-tenant whatever: provided that the increment of land thus obtained shall not entitle the person in possession of the estate or tenure, to which the land may be annexed, to a right of property or permanent interest therein beyond that possessed by him in the estate or tenure to which the land may be annexed, and shall not in any case be understood to exempt the holder of it from the payment to government of any assessment for the public revenue, to which it may be liable under the provisions of Regulation II. 1819, or of any other regulation in force: nor, if annexed to a subordinate tenure held under a superior land-holder, shall the under-tenant, whether a khoodkast ryot holding a maurusi istimrari tenure at a fixed rate of rent per beegah, or any other description of under-tenant liable by his engagements, or by established usage, to an increase of rent for the land annexed to his tenure by alluvion, be considered exempt from the payment of any increase of rent to which he may be justly liable. Reg. XI. 1825, sect. 4, cl. 1.

Lands separated by a sudden change of the

The above rule shall not be considered applicable to cases in which a river, by a sudden change of its course, may break through and intersect an estate, without any gradual encroachment, or may

Disputes regarding right of use of any land or water by the public, or individuals, or classes of persons.

3802. If a dispute arises concerning the right of use of any land or water, the magistrate, within whose jurisdiction the subject of dispute lies, may enquire into the matter; and, if it appears to him that the subject of dispute was open to the use of the public, or of any person, or of any class of persons, the said magistrate may order that possession thereof shall not be taken or retained by any party to the exclusion of the public, or of such person, or of such class of persons, as the case may be, until the party claiming such possession obtains the decision of a competent court adjudging him to be entitled to such exclusive possession. Provided that the magistrate is not to pass any such order as aforesaid, if the matter be such that the right of use is capable of being exercised at all times of the year, unless that right has been ordinarily exercised within three months from the date of the institution of the inquiry; or, in cases where the right of use exists at particular seasons, unless such right has been exercised without discontinuance before the dispossession of which complaint is made. Act IV. 1840, sect. 6.

If a bund constructed by a person on his own land is injurious to the property of another.

3803. If a person should construct a bund on his own land, which proves injurious to the property of another, the case would come more properly within the jurisdiction of the civil than of the criminal courts; but cases may arise in which the immediate interference of the magistrate would be necessary and proper to prevent either a breach of the peace or any serious injury to the property of the complainant. Const. No. 1091.

Opposition to, or contravention of, orders of magistrate passed under this Act.

3804. Any person opposing by force the execution of an order for possession or use given under this Act, or refusing obedience thereto, or knowingly contravening the same, as long as it remains in legal force, is, together with all persons aiding and abetting, liable on conviction before a magistrate to be sentenced to simple imprisonment for a term not

course of a river, being clearly recognized, remain the property of the original owner.

by the violence of its stream separate a considerable piece of land from one estate, and join it to another estate, without destroying the identity and preventing the recognition of the land so removed. In such cases the land, on being clearly recognized, shall remain the property of its original owner. Reg. XI. 1825, sect. 4, cl. 2.

Island churs thrown up in a navigable river (the channel between the island and the shore not being fordable) belong to government; but if fordable, to others.

When a *chur* or island may be thrown up in a large and navigable river (the bed of which is not the property of an individual), or in the sea, and the channel of the river, or sea, between such island and the shore may not be fordable, it shall, according to established usage, be at the disposal of government.—But, if the channel between such island and the shore be fordable at any season of the year, it shall be considered an accession to the land tenure or tenures of the person or persons, whose estate or estates may be most contiguous to it, subject to the several provisions, specified in the first clause of this section, with respect to increment of land by gradual accession. Reg. XI. 1825, sect. 4, cl 3. *See Act IX.* 1847.

In small and shallow rivers, how to be determined.

In small and shallow rivers, the beds of which with the julkur right of fishery may have been heretofore recognized as the property of individuals, any sand bank or chur that may be thrown up, shall, as hitherto, belong to the proprietor of the bed of the river, subject to the provisions stated in the first clause of the present section. Reg. XI. 1825, sect. 4, cl. 4.

All other cases to be determined by usage or equity.

In all other cases, *viz.* in all cases of claims and disputes respecting land gained by alluvion, or by dereliction of a river, or the sea, which are not specifically provided for by the rules contained in this regulation, the courts of justice, in deciding upon such claims and disputes shall be guided by the best evidence they may be able to obtain of established local usage, if there be any applicable to the case, or, if not, by general principles of equity and justice. Reg. XI. 1825, sect. 4, cl. 5.

exceeding 6 months, or to fine not exceeding 200 rupees, commutable if not paid to a period of simple imprisonment not exceeding 6 months, or to both imprisonment and fine as aforesaid. Act IV. 1840, sect. 7.

Proceedings if European British subject refuses to yield possession.

3805. Where a European British subject had been guilty of the offence described in sect. 7, Act IV. 1840, by retaining possession of a house awarded to another party, and refusing to admit the constable who first served him with a summons, and then held a warrant for his apprehension,—the advocate general was of opinion that in all cases of warrants of arrest of a party *convicted* by a magistrate or justice of the peace of any offence under the Act in question (or indeed under any Act giving similar power) the warrant may be executed (if necessary) by the breaking of a door or of the house in which the offender may be, *after demand of admittance* accompanied by *production of the warrant* and refusal to admit or open. The remedy is two fold, for the officer may not only break the door in execution as aforesaid of the warrant for the arrest of the convicted offender; but, if he hold also the magistrate's order to put the ousted party again into possession, he may, after demand and refusal of admittance, with production of his order as above, break open the door in execution of that order; and, once within the house, may arrest the offender under the other warrant. Opinion of Advocate General, May 31, 1853.—From this it would appear that the case must be tried *exparte,* if the defendant fails to appear on summons, and that the warrant must issue after conviction; and that in such case it is necessary to prove the due service of the summons and the failure to appear on the date specified therein, by the deposition of the officer employed to serve it.

Security to keep the peace may be also required; but it is rarely necessary.

3806. A magistrate is competent, upon reason shown, to require security from a party in a case under Act IV. 1840 not to disturb the peace in attempting to recover possession awarded in favor of his opponent; and in such case the provisions of Act V. 1848 are applicable as to the period for which he can demand security. But it cannot often be necessary to call for security, even upon any sufficient ground of presumption that the party cast will disregard the magistrate's orders under the Act, for section 7 of that law authorizes punishment in the event of disobedience of it. Letter of N. A. to Judge of Tirhoot, No. 1148, October 5, 1849.

Orders of magistrate are not affected by decisions of revenue authorities except pending settlement;

3807. In passing an order under these provisions, the magistrate need not be guided by a previous decision of the collector, unless such collector was at the time engaged in making a settlement, or was acting under the powers vested in collectors by sect. 16, Reg. VII. 1822, and sect. 2, Reg. IV. 1828; which latter provision suspends the powers of a magistrate to interfere in such disputes in regard to all mahals pending settlement,—the time of settlement being defined to commence from the date on which the settlement officer issues orders for adjusting the boundaries, for measuring any of the lands, or for making a census of the inhabitants of any village or portion of a village belonging to such mahal (of which intimation is to be given to the magistrate within whose division the village is situated), and to close with the day on which he is informed that the settlement as made and revised by him has been finally confirmed; and all police officers are required to give immediate and efficient support to the revenue officers in the execution of their duties.—In such

cases, the previous summary decisions passed by magistrates may be revised, altered, or reversed by collectors, or other officers exercising the powers vested in them by this regulation, intimation of such revision, alteration, or reversal, being invariably given to the magistrate; and the parties in whose favor judgment is passed by the collector, or other officer above-mentioned, are to be maintained in possession, until the decision is altered or reversed by a superior board or by a competent superior court. By cl. 2 sect. 34, Reg. VII. 1822, the magistrate is required to certify all cases of such disputes, in lands pending the settlement, to the revenue authorities, who are to investigate and determine the case, transmitting to the magistrate in cases of forcible dispossession, or forcible disturbance of possession, copies of their first proceeding in the case and of the roobakaree containing the final award. Const. No. 445. See also supplementary index to the constructions.

in which cases such disputes are to be referred to the revenue authorities.

Cases occurring in khas mahals.

3808. Cases of dispossession, which occur in estates held khas on account of government, should be disposed of by the revenue authorities under cl. 4, sect. 14, Reg. VII. 1822, and cl. 2, sect. 2, Reg. IX, 1825. Letter of N. A. No. 1356, September 8, 1843.

Thakbust papers to be examined by magistrate in boundary disputes.

3809. But it seems doubtful how far this rule is still held in cases instituted before the magistrate; for, in reply to a suggestion of the board of revenue that all boundary disputes in pergunnahs demarcated and under demarcation should be transferred to the superintendent of survey, the nizamut adawlut observed that cl. 2, sect. 34, Regulation VII. 1822 has been virtually superseded by Act IV. 1840, in which the language of the law is imperative, that cases under the Act shall be decided by the magistrate; and therefore declined to comply with it. But they issued an injunction to magistrates in cases of boundary disputes, in pergunnahs of which the professional survey has been completed, to send for and inspect the thakbust papers and survey maps before coming to a decision. Letter of N. A. to Board of Revenue, No. 564, June 26, 1851. C. O. No. 61 of vol. 4. *L. P.*

Objection of a third party to execution of decree may be received.

3810. A third party petitioned a magistrate against the execution of a decree passed *exparte*, on the ground that it had been obtained by collusion, and that he had throughout been in possession of the land, which formed the subject of this suit. The nizamut adawlut held that the magistrate did right in receiving such objection to the execution of the decree and in disposing of them. Letter of N. A. to Judge of 24-Pergunnahs, No. 1097, August 13, 1852.

Judge may take up the appeal of a third party.

3811. So, where a person, not a party to the suit, petitioned the magistrate against the execution of his decree on the ground that the water-course, which had formed the subject of dispute, did not belong to either of the contending parties but to himself; and the magistrate refused to entertain the objection on the ground that he could not review his judgment; and the petitioner appealed from this order long after the expiry of the month allowed for the appeal from the decree, and the judge reversed the order in appeal, and directed the magistrate to enquire into the case, the nizamut adawlut held that the judge was right in hearing the appeal, as it was preferred in time. Letter of N. A. to Judge of 24-Pergunnahs, No. 1096, August 13, 1852. *Semble.*—A magistrate can review his own judgment on the petition of a third party; or, rather, the right of action of C is not barred by a former suit between A and B for the same land.

Decision to be upheld until set aside by a regular suit.

3812. A summary decision passed in a criminal court, affecting civil rights, should be upheld, until it is set aside by the judgment in a regular suit, even though the law under which it was passed has been subsequently altered. Const. Nos. 639 and 937.

Lists of exhibits.

3813. Lists of exhibits filed in cases under Act IV. 1840, should be on plain paper. C. O. No. 7, August 25, 1854. *L. P.*

Appeals lie as in other cases.

3814. All orders passed under this Act are appealable in the usual manner under the regulations and laws, that are or may be in force relating to appeals from the orders of magistrates or other officers exercising the powers of magistrates. Act IV. 1840, sect. 8.

Session judge may suspend execution of magistrate's order.

3815. The session judge is competent to use his discretion in suspending at any time the execution of the magistrate's final order, pending the decision of the case in appeal. Const. No. 1157.

Session judge cannot review his judgment.

3816. The application of a session judge to be allowed to review his judgment in an appeal under Act IV. 1840, was refused by the nizamut adawlut, on the ground that under sect. 6, Act XXIV. 1837, and sects. 2 and 3, Act XXXI. 1841, the order of the judge in such cases is final, and that Act IV. 1840 leaves no room for review. *Sevestre's Reports, vol. 2, page 155.*

Nizamut adawlut cannot take appeals in such cases;

3817. The nizamut adawlut cannot interfere with the order of any subordinate criminal court regarding possession of land, as their authority is confined to criminal trials by the terms and spirit of Act XXXI. 1841. Reports *L. P.* 1852, part 1, page 679.

or revise the orders of the lower courts on the ground of illegality or irregularity.

3818. The decision of the session judge in appeal from the order of a subordinate criminal court in any judicial proceeding other than a criminal trial, is not open to revision by the nizamut adawlut; and in regard to such cases that court possesses no jurisdiction .The provisions of sect. 6, Act XXIV. 1857 are specific and imperative; and bar the interposition of the court: and sections 2 and 3, Act XXXI. 1841 are clearly declaratory of the finality of the session judge's orders in all judicial proceedings other than criminal trials. Such being the case, the court cannot assume to itself jurisdiction on the ground that the orders passed by a session judge are unwarranted or irregular. Sections 2 and 4, Act IV. 1840 declare in distinct and positive terms, that the possession confirmed, or given, under the orders of the magistrate, is to be maintained until the right of the parties disputing be determined by a competent court, subject only to one appeal to the session judge under section 8 of the Act: no review or further proceeding of any kind whatever is mentioned or contemplated by the Act. Reports *L. P.* 1851, page 1453.

Case may be referred to arbitration with the consent of all parties.

3819. In cases instituted under this Act, the magistrate is authorized, with the consent of all the parties, to refer the matter in dispute, so far as it is cognizable under this Act, to an arbitrator or arbitrators for decision, whose award is to be executed as if it were the award of such magistrate. Act IV. 1840, sect. 9.

Form in notifying to a person that he is requested to arbitrate.

3820. The simplest form for a magistrate to use in notifying a wish to have the services of any party as an arbitrator, is to send a copy of the roobakaree recording consent to arbi-

tration with these words, or a translation of them, written below it:—"copy of the above proceeding forwarded to ———— for his information. The attendance of ———— is requested at the office of the magistrate on the th day of ——." Or "he is requested to signify his acceptance of the office of arbitrator by returning this copy with a note stating such acceptance entered on it to the magistrate's office. Date". This copy of the proceeding should be authenticated by the magistrate's official seal and signature. C. O. No. 87 of vol. 4. *L. P.*

Legal right of attachment or seizure not affected by these provisions.

3821. Nothing in this Act contained is to affect the legal exercise of any right of attachment or seizure vested by law in any parties. Act IV. 1840, sect. 10.

Superintendent of police may direct enquiry.

3822. A superintendent of police may order a magistrate to take up a case of disputed possession, although the latter does not deem that measure necessary for the preservation of the peace. Const. No. 886.

Civil court cannot interfere until decision of regular suit.

3823. A civil court cannot stay the execution of an award under Act IV. 1840, pending the decision of a suit instituted to reverse it. Summary Reports S. D. A. April 26, 1847. *L. P.*

Assistants with special powers may decide such cases referred to them.

3824. Assistant magistrates and deputy magistrates vested with special powers are competent to decide cases under the provisions of Act IV. 1840, when such cases are referred to them by the magistrates to whom they are subordinate; and such assistants are to deal with such cases in the same way as magistrates are competent to deal with them under the said Act. Provided always that the magistrates may at all times recall from such assistants any depending cases which have been referred to them under this Act, and which, for the more speedy administration of justice, or for any other reason, the magistrates deem it proper to determine themselves in the first instance. Act XXVII. 1845, sects. 1, and 2. Act X. 1854, sect. 2.

Cases of doubtful jurisdiction.

3825. In a case of disputed possession, the plaintiff asserted that the lands were situated in Purneah, the defendant that they were in Bhaugulpore. The magistrate of Purneah was informed that he should proceed with the investigation; and, if it should appear that the lands were in Bhaugulpore, he should refer the parties to the magistrate of that district, and certify to that officer the proceedings held by him in the case. Const. No. 594.

Limitation of extension of Act.

3826. This Act does not extend to any place beyond the limits of the presidency of Fort William in Bengal, or to the settlements of Prince of Wales' Island, Singapore, or Malacca, or to any place situated within the local limits of the jurisdiction of Her Majesty's supreme court at Calcutta. Act IV. 1840, sect. 11.

CHAPTER III.

OF OFFENCES AGAINST THE PERSON.

SECTION I.

OF ABUSE.

How punishable.

3827. Abusive language and calumny are noted in sect. 8, Reg. IX. 1793 (*Ced. Prov.* sect. 8, Reg. VI. 1803)* among the petty offences declared to be within the competence of the primary powers of magisterial officers. By cl. 1, sect. 12, Reg. XX. 1817† police officers are not to take cognizance of such cases; and all investigations for the purpose of ascertaining the truth or falsehood of such charges are invariably to be conducted by the magistrate in person or his assistant, under sect. 6, Reg. VII. 1811.‡ The books contain no further provisions respecting such cases; but slander of whoredom is one of the five offences for which specific penalties have been prescribed in the koran, and it is therefore necessary to record shortly the provisions of the Mahomedan law regarding it.

* v. *para.* 703.

† v. *para.* 2259.

‡ v. *para.* 358.

Mahomedan law regarding slander of whoredom.

3828. This crime is defined to be, the false imputation of whoredom against a married man or woman, who is free, sane, adult, of the Mahomedan faith, and of chaste repute, *i. e.* free from any suspicion of adultery. The reason for requiring chastity in the accused is, "because no scandal attaches to any other persons than those who are of chaste repute, and the accuser of an unchaste person moreover speaks truly." Equivocal expressions are construed according to the apparent intention of the speaker; and in a case of mutual recrimination, both parties incur the punishment of slander. But no penalty is due for imputing whoredom to a person who has actually committed the offence, whether in the particular instance stated, or in any other; provided the fact be established, either by the positive testimony of four competent witnesses; or by the voluntary acknowledgment of the party accused; or by the evidence of two men, or one man and two women, in proof of a confession of the fact. It is necessary that the slandered person if living, or if dead that the person whose lineage is affected by the imputation, should prosecute the charge and demand the stated punishment, because in this case the right of the individual is blended with the public right; and if the sentence is required by such prosecutor, the offence being legally proved, the magistrate is bound to order the infliction of the penalty. The free confession of the accused, or the evidence of two credible male witnesses, is required to prove the accusation; and a confession once made cannot be retracted. The prescribed punishment is eighty stripes for a free person, and forty for a slave: and the testimony of

a person, who has once suffered this punishment for slander, is for ever afterwards inadmissible. The slanderer of a deceased person may be prosecuted, if it can be shown that the slander affects the living; and the lapse of time is no bar to the prosecution. It is commendable to relinquish the prosecution of a charge of this nature; and the magistrate is authorized to advise the complainant to renounce his claim, at any time before the charge is established. A single punishment for slander, as for whoredom and wine-drinking, includes all past offences, the design not being private satisfaction, but on a principle of public justice to deter people by an example from the perpetration of such offences; but if a person is guilty of any two, or of all three, of those offences, a separate punishment is to be inflicted for each.(a)

Calumny of public officer.

3829. Calumny against a public officer with respect to his public conduct as a judge, is a very heinous offence, and is punishable both according to Mahomedan law and to the regulations. Reports *L. P.* 1855, part 2, page 442.

SECTION II.

OF PENAL RECOGNIZANCES AND SECURITY TO KEEP THE PEACE.

Persons convicted of a breach of the peace, or of an intention to commit such, may be required, by the court passing the final order, to give muchalka, with or without security, to keep the peace for one year if the sentence is passed by the magistrate, or 3 years if passed by the session judge or nizamut adawlut.

3830. Whenever a person charged with a serious affray, assault, or other violent breach of the peace, or with causing, aiding, or abetting the same, or with assembling armed men, or taking other unlawful measures, with the evident intention of committing the same, is convicted of such charge before any criminal court by which the offence is cognizable; and the court, by which a final sentence or order in the case is passed, is of opinion that it is just and necessary to require a muchalka, or penal recognizance for keeping the peace, with or without security, for the same purpose, from the person so convicted; it is competent to the court, passing the final sentence or order, in such cases to direct that the person so convicted be required to execute a muchalka, or formal engagement, in a sum proportionate to the party's condition in life, and the circumstances of the case, for keeping the peace during such period as it appears proper to fix in each instance; not exceeding one year from the time of the prisoner's discharge, if the sentence or order is passed by a magistrate, joint magistrate, or other officer exercising the functions of a magistrate; or three years, if the sentence or final order is passed by a sessions court, or the court of nizamut adawlut. Reg. IV. 1825, sect. 2, cl. 1.

Such court also in requiring security may provide that the party failing to give security be imprisoned for corresponding periods.

3831. In cases of an aggravated nature, wherein it appears necessary to require security for keeping the peace in addition to the muchalka of the party, it is also competent to the court passing the final sentence or order to direct the same; and to fix the amount of the security-bond (which should never be excessive, and should in all cases be such as it would be proper to enforce in the event of a breach of the engagement) to be executed by the surety or sureties; with a provision that, if the same be not given, the party

(a) Harington's Analysis, vol. 1, page 271; and Hedaya, book 7, chapter 5.

required to find the security is to be kept in custody for any time not exceeding the period specified in the preceding clause, according as the order is passed by a magistrate, or session judge, or by the nizamut adawlut. Reg. IV. 1825, sect. 2, cl. 2.

Magistrate may authorize officer serving a warrant to require security for keeping the peace as well as bail.

3832. When a magistrate, issuing a warrant for the apprehension of any person accused of a heinous offence, deems it right to authorize the officer, to whom the warrant is committed, to receive bail for the appearance of the accused, he may at the same time authorize such officer to require from him security for keeping the peace while the charge is under investigation;—as has already been noted in para. 335. In such cases the security-bond is to be in the form No. 20 of appendix A. Reg. IX. 1807, sect. 3, cls. 3 and 5.

So, police officers may in certain cases require such security in addition to bail;

3833. So, in cases of manifest necessity, when the darogah or other officer of police is apprehensive of danger to the public tranquillity by the enlargement of a person arrested on a charge of affray, violent assault, or other bailable offence, without security being taken for his peaceable conduct; the party apprehended is to be required, in addition to the bail for his appearance to furnish security for keeping the peace while the charge is under investigation, and the surety (or sureties) is to execute a recognizance according to the form No. 36 of appendix A, in an amount to be regulated by the circumstances of the case, and the condition of the person executing the same. Reg. XX. 1817, sect. 25, cl. 11.

on plain paper.

3834. Security-bonds taken by police officers should be drawn out on unstamped paper. Const. No. 710.

Magistrates may take muchalkas from any person, although not convicted of any specific offence.

3835. In the territories subject to the presidency of Bengal, it is lawful for the magistrates and joint-magistrates to take muchalkas or penal recognizances in the form annexed, as well from British subjects as from other persons, in all cases wherein it may appear just and necessary to require the same for the maintenance of the peace in their respective jurisdictions, although the party to be bound in such recognizances may not have been convicted of any specific offence, provided that the amount of the recognizance in all such cases shall be proportionate to the condition in life of the said party and to the circumstances of the case. Act V. 1848, sect. 2.

Form of muchalka.

Form of muchalka. Whereas I , inhabitant of , have been called upon to enter into a muchalka to keep the peace for the term of , I hereby bind myself not to commit any act that can occasion a breach of the peace during the said term; and in case of my making default therein I bind myself to forfeit to government the sum of rupees. Dated the day of

Magistrates may require security in addition to the muchalka.

3836. In cases of an aggravated nature wherein it appears necessary to require security for keeping the peace in addition to the recognizance of the party, it is lawful for such magistrates to direct the same and to fix a reasonable amount for the security-bond to be executed, in the form annexed, by the surety or sureties. Act V. 1848, sect. 3.

Form of security bond.

Form of security bond. Whereas , inhabitant of , has been called upon to give security to keep the peace for the term of , I hereby declare myself surety for the said . that he shall not commit any act that can occasion a breach of the peace during the said term; and in case of his making default therein I hereby bind myself to forfeit to government the sum of rupees. Dated the day of

Magistrate may take muchalka and security for one year without reference to superior authority, and confine in default.

3837. Whenever it appears to the magistrate that the period for which the party should be bound to keep the peace with or without additional security, need not exceed one year, it is lawful for him, without reference to superior authority, to give directions accordingly, and in default of such recognizance or additional security to commit the party to prison in the civil jail until he shall do what has been required of him. Act V. 1848, sect. 4.

If the magistrate requires the muchalka or security for more than one year (the period is never to exceed 3 years) he is to lay his proceedings before the session judge, who may confirm, modify, or annul his orders.

3838. Whenever it appears to the magistrate that the period for which the party should be bound to keep the peace, with or without additional security, ought to exceed the period of one year, the magistrate is to record his opinion to that effect with an order specifying the amount of recognizance and security as well as the number of sureties which should in his judgment be required, and the period for which the recognizance and security should be required, which however is in no case to exceed three years. If the party does not furnish the recognizance and security so required, the proceedings are to be laid before the session judge, who, after examining them and calling for any further information which he may think necessary, is to pass orders on the case confirming, modifying, or annulling the orders of the magistrate; and, if the orders so passed by the session judge confirm to any extent the requisition for recognizance or securities, the session judge is to direct the magistrate to commit the party to prison in the civil jail until he shall do what has been required of him. Act V. 1848, sect. 5.

No person is to be imprisoned for a longer period than that fixed for the muchalka.

3839. Provided always that no party is to be kept in prison under the foregoing provisions of this Act for a longer period than that for which the recognizance and securities have been required from him. Act V. 1848, sect. 6.

The magistrate cannot require security or muchalkas except in the cases above specified.

3840. The regulations do not vest the magistrates with a general power to demand security to keep the peace, whenever there may appear grounds to sanction the measure. The cases in which the magistrate has power to require muchalkas from individuals, and to demand security for keeping the peace, are detailed in the provisions above quoted, and it does not seem proper to extend that power any further. Const. No. 831.

Magistrate cannot order darogah to require muchalka from a person until he has been heard in his defence.

3841. A magistrate is not competent to direct the darogah to require a person to enter into a muchalka to keep the peace, before he has been heard in his defence; after he has heard the defence, he may, if necessary, require the party to execute such muchalka in his presence. Const. No. 620.

Magistrate may insist on personal attendance.

3842. As the object of a magistrate in requiring the personal attendance of a party under Act V. 1848, is to judge of the propriety of taking a personal recognizance from him, it is always in the discretion of a magistrate to insist upon personal attendance when he sees fit. Letter of N. A. to Judge of Dacca, No. 1507, November 3, 1852 in C. O. Sup. Pol. *L. P.* No. 7 of 1852.

Warrant may be issued if summons is evaded.

3843. A magistrate is empowered by Act X. 1845* to issue a warrant for the arrest of a party, who may refuse or neglect to attend in person on a summons, upon proof that due diligence has been used to serve such summons upon him, for the purpose of requiring him to give security under Act V. 1848. C. O. Sup. Pol. *L. P.* No. 4 of 1853.

* *See para.* 1581.

3844. A session judge cannot direct that a person, who is not before the court as an accused party or otherwise, should be required to execute a muchalka to keep the peace, as no opportunity is afforded to such person of showing cause against it. But he may communicate his opinion to the magistrate, leaving him to proceed in the case under the provisions of Act V. 1848. Reports *W. P.* 1856, part 1, page 106.

Session judge cannot require a person not before the court to execute a muchalka

3845. All sentences and orders passed under this Act are appealable subject to the general provisions which regulate appeals. Act V. 1848, sect. 10.

Appeals lie as usual.

3846. The provisions contained in sects. 5, 6, and 7, Reg. VIII. 1818 are to be considered applicable to all prisoners confined on requisition of security for keeping the peace, under Reg. IV. 1825, or Act V. 1848, and to the sureties for such persons. [These rules regard the power of the magistrate to release such prisoners, when they are of opinion that they can be set at liberty without hazard to the community; see paras. 3597 to 3600;—they prohibit the removal of prisoners confined in default of security to the jail of a different zillah without the sanction of government, except in emergent cases; see paras. 2988 and 2990;—and they declare in what manner sureties can obtain release from their responsibility, and the continuance of the responsibility after the death of the surety; see paras. 3595 and 3596.] Reg. IV. 1825, sect. 3. Act V. 1848, sect. 7.

Release of such prisoners;

prohibition of removal,

rules regarding sureties.

3847. Whenever it is proved before the magistrate that any such recognizance has been forfeited, he is to proceed to enforce the penalty of such recognizance in the mode prescribed for the satisfaction of decrees of the civil court. Act V. 1848, sect. 8.

Penalty of recognizance to be enforced as decree of civil court.

3848. Whenever it is proved before the magistrate that any such recognizance has been forfeited, if a security-bond has been taken and the magistrate thinks that proceedings should be had upon such bond, he is to give notice to the surety or sureties to pay the penalty, or to show cause why it should not be paid; and, if no sufficient cause be shown, the magistrate is to proceed to recover the penalty from such surety or sureties by the attachment and sale of any of his or their property in the mode prescribed for the attachment and sale of property in satisfaction of decrees of the civil court; and, if the penalty be not paid and cannot be recovered by such attachment and sale, such surety or sureties shall be liable to confinement by order of the magistrate in the civil jail of the station during a period not exceeding six months. Act V. 1848, sect. 9.

Magistrate how to recover the penalty of the security-bond, if the recognizance be forfeited.

3849. A muchalka ought to be in the form prescribed by the Act, and the forfeiture should be engaged for to the government and not to the magistrate; but the court held that such mere irregularities were not sufficient to vitiate the muchalka. Reports *L. P.* 1852, part 1, page 1091.

Irregularity in form does not vitiate muchalka

3850. The magistrate must distinctly set forth in his order what precise act he considers it shown that the defendant has personally committed, and has thereby brought himself within the predicament contemplated by the legal form of muchalka, before a forfeiture under the law can be adjudged. Reports *L. P.* 1852, part 1, page 1091.

Magistrate must set forth the act, on which he grounds his order of forfeiture.

3851. As under these rules the exact process prescribed for the satisfaction of decrees of the civil court must be followed, so a person confined on forfeiture of his recognizance may

Rules for relief of insolvent debtors applicable to per-

sons confined on forfeiture of recognizance.

claim his release upon proof of insolvency, under the rules applicable to the case of a civil debtor. (Sect. 2, Reg. II. 1806.) Letter from N. A. to Judge of 24-Pergunnahs, No. 1650, December 10, 1852.

All muchalkas and security-bonds may be enforced as above.

3852. All muchalkas and security-bonds which by force of any Act or regulation may be taken by criminal courts of the East India Company, or by magistrates or joint-magistrates, for keeping the peace or for good behaviour, may be enforced in the manner prescribed by sects. 8 and 9 of this Act. Act V. 1848, sect. 11.

Rule when the magistrate takes recognizances as justice of the peace.

3853. The magistrate must be guided by the provisions of Reg. IV. 1825 [and Act V. 1848] in regard to the requisition of penal recognizances from persons, of whatever description, who are subject to his jurisdiction in his capacity of a magistrate of the East India Company: but when it appears necessary to take such recognizances in his capacity of justice of the peace, he should consult the advocate general, if in doubt as to their legality or otherwise. Const. No. 446. It will be observed that Act V. 1848 is applicable to all British subjects.

Magistrate how to proceed to enforce the forfeiture of recognizances taken by him in his capacity of justice of the peace.

3854. When a magistrate desires to enforce the forfeiture of recognizances for keeping the peace, which he has taken in his capacity of justice of the peace, he is to transmit such recognizance before the next ensuing sessions of the supreme court to the clerk of the crown, as the only proceeding for the forfeiture is in the supreme court. The recognizance should always distinctly specify the time for which it is to continue in force. Govt. Order, June 9, 1830.

Limitation of amount of such recognizances taken from Europeans.

3855. It follows from the exposition of the law contained in the foregoing order, that the amount of the penalty of such recognizances is not limited by the amount of penalty which a magistrate is authorized to levy from a European under 53 Geo. III. chap. 155, sect. 105. Const. No. 826.

Power of assistant.

3856. Construction No. 529, which declares specially empowered assistants competent to require muchalkas and security under Reg. IV. 1825 is rescinded. C. O. No. 211 of vol. 3.

SECTION III.

OF ASSAULT AND WOUNDING.

Inconsiderable assaults.

3857. Inconsiderable assaults are classed among the petty offences punishable, under sect. 8, Reg. IX. 1793 (*Ced. Prov.* sect. 8, Reg. VI. 1803), by officers empowered to adjudicate criminal cases.* Those of a more serious nature must be dealt with by officers exercising higher powers, or by the magistrate, or committed to the sessions, according to the degree of violence used or the nature of the injuries sustained.

v. para. 8827.

Cases of bone-fracture are to be disposed of by the

3858. The mere circumstance of a bone-fracture does not take a case of assault out of the cognizance of a magistrate; it being left to him to determine, with reference to the

extent of the injury, and other considerations of a similar nature, what cases of this description should be disposed of by himself, and what made over for trial to the sessions court. And it is not competent to the latter authority to cancel a commitment made by the magistrate under this discretionary power, merely on the ground of a difference of opinion in regard to the tribunal before which the case should be brought, and by which consequently the amount of the punishment is to be regulated. C. O. No. 53 of vol. 3, paras. 2 and 3.

magistrate, or committed to the sessions, according to the extent of the injury and intent of the aggressor.

3859. So also, in cases attended with wounding, if the wounds have been inflicted with a sword (which cases were formerly held to be beyond his competence), the magistrate is empowered to commit or to dispose of the case himself as he judges most expedient, without regard to the instrument of offence, and with reference solely to the nature and extent of the injuries and the apparent intent of the aggressor. C. O. No. 102 of vol. 3.

So, in cases attended with wounding.

3860. A magistrate is clearly competent to dispose of a case of burning of the person under his general powers declared by sect. 19. Reg. IX. 1807, and explained in the foregoing circular orders. Reports *L. P.* 1852, part 1, page 211.

Burning the person.

3861. In cases of wounding, the commitment should not be made until the result of the wounds has been put beyond doubt, either by the recovery from danger, or the death of the wounded person. Const. No. 558.

Commitment not to be made, until result of wounds is known.

3862. When a wounded individual is sent by the magistrate for examination as to the nature and extent of his or her wounds, it rests with the surgeon to decide whether such person is to be placed in the hospital for treatment, or not; and the surgeon's order on this point is to be conclusive. C. O. No. 142 of vol. 3.

The surgeon is to decide whether a wounded person sent to him for examination is to remain in the hospital or not.

3863. Any person convicted of having unlawfully and maliciously intended to wound, maim, or otherwise do corporal injury to one individual; and of having, in the prosecution of such intention, accidentally wounded, maimed, or otherwise corporally injured another individual; is to be held punishable for the act committed by him with such unlawful and malicious intention, in like manner as if such act had been perpetrated on the person intended to have been wounded, maimed, or otherwise injured. The law officers of the sessions courts, in such cases, are to be required to state the punishment to which the prisoner would have been liable, if he had committed the act, of which he is convicted, upon the person intended to have been wounded, maimed, or otherwise injured by him; and the sessions courts are to pass sentence accordingly, or to refer the trial to the nizamut adawlut, as the case is referrible to that court, or otherwise, under the general regulations. *Beng. and Ben.* Reg. VIII. 1801, sect. 4. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 4.

Liability of persons intending to wound one person, and accidentally wounding another.

Procedure in sessions courts in such cases;

3864. In trials referred under the preceding section to the nizamut adawlut, the law officers of that court are also to declare in their futwa to what punishment the prisoner would have been liable, if the act of which he is convicted had been committed as intended by him; and the court after considering such futwa, with the whole of the proceedings in the case, are to pass such sentence on the prisoner, short of death, as they judge adequate to his offence. *Beng. and Ben.* Reg. VIII. 1801, sect. 5. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 5.

and in the nizamut adawlut.

Commitment in case of wounding with intent to murder.

3865. In all cases of wounding, manifesting a deliberate intention to commit murder, it is the duty of the magistrate to commit the prisoner to be tried on that specific charge. Reg. XII. 1829, sect. 2, cl. 1.

Futwa in such case.

3866. In all trials for the specific offence described in the foregoing clause, the law officer sitting on the trial is to declare whether the intention to commit murder be established. Reg. XII. 1829, sect. 2, cl. 2.

Sentence in such case.

3867. If the law officer finds the intent to commit murder, and the judge holding the trial concurs therein, it is competent to him to pass such sentence of imprisonment as he deems adequate to the crime, not exceeding the period of fourteen years' imprisonment. Reg. XII. 1829, sect. 2, cl. 3.

If judge dissents from law officer in regard to intent to murder, he may refer.

3868. In any case in which a session judge dissents from the futwa of the law officer, regarding the intent to commit murder, it is competent to the judge to make a reference to the nizamut adawlut, as under the like circumstances he is in all other cases authorized by the general regulations. Reg. XII. 1829, sect. 3.

So, if he considers the sentence within his competence inadequate.

3869. Under sect. 6, Act XXXI. 1841, the session judge can refer to the nizamut adawlut any case, in which he considers the sentence, which he is empowered to pass, inadequate to the guilt of the prisoner. Reports *L. P.* 1854, part 1, page 111. This over-rules the precedent in N. A. R. vol. 5, page 176.

Sentence to be passed in cases of wounding under futwa of *hukoomut-i-udl*;

3870. In many cases of corporal injury, extending even to *mayhem*, the law officers on the full conviction of the prisoners declared them liable to *hukoomut-i-udl* only, or a just award, which is construed by them to mean payment by the prisoner of the expenses incurred for medicines and medical attendance by the party injured.(*a*) Such reparation being considered wholly inadequate, it is hereby enacted that the session judge is, under such futwa, competent to pass sentence of imprisonment for any period not exceeding seven years, with power to refer the record to the nizamut adawlut in any case, in which they deem that punishment inadequate; and on receipt thereof, the nizamut adawlut, after requiring a further futwa from their law officers, are to pass sentence of imprisonment for such limited period of time, as under all the circumstances of the case is equitable and just. Reg IV. 1822, sect. 6.

which sentence may include corporal punishment.

3871. In a case in which certain convicts under sentence of perpetual imprisonment were found guilty of assaulting and cutting off the nose of the bukshee of the jail, and were declared by the law officer liable to tazeer as well as hukoomut-i-udl, it was held that the above provision does not preclude the judge from awarding corporal punishment under cl. 7, sect. 2, Reg. LIII. 1803.* N. A. R. vol. 2, page 362.

* *v. para.* 1814.

If the act of the accused is held to be justifiable, he

3872. In a case of severe wounding, in which the judge virtually agreed with the law officer in considering the act of the prisoner justifiable, the court held that he should have

(*a*) This is exactly in accordance with the Mosaic law:—"And if men strive together, and one smite another with a stone, or with his fist, and he die not, but keepeth his bed: if he rise again, and walk abroad upon his staff, then shall he that smote him be quit: only he shall pay for the loss of his time, and shall cause him to be thoroughly healed." *Exodus Chap. XXI. v.* 18 *and* 19.

released him in accordance with the concluding words of cl. 1, sect. 9, Reg. IX. 1807; which authorizes a magistrate to release the accused, if the homicide in which he appears to have been concerned, is clearly shown, from the whole of the evidence, to have been accidental or justifiable under the Mahomedan law and the regulations. Reports *L. P.* vol. 4, part 1, page 164. should be released.

3873. The castration of any person, whether a slave or otherwise, is held criminal and punishable by the Mahomedan law, particularly if the offender is proved to have made it his professional or frequent practice; nor is the consent of the party allowed to obviate the punishment, which, in all cases, is left to the discretion of the governor of the country, or his representative, and to be proportioned to the magnitude of the offence. Such cases are to be treated as other heinous offences. C. O. Nos. 4 and 192 of vol. 1. Castration is punishable though effected with the consent of the person injured.

3874. Magistrates are to report to the superintendent of police all cases in which the practice of swinging at the charak pooja is attended with cruelty, or enforced without the free consent of the parties submitting to it. C. O. Sup. Pol. *L. P.* No. 8 of 1853. Charak pooja.

3875. The prisoners, having been charged with murder, were convicted of homicide in heat of blood in sudden affray, and sentenced under circumstances of aggravation (three men assaulting one, and beating him when he had been felled to the ground) to imprisonment for 3 years. N. A. R. vol. 1, page 111. Assault attended with homicide and beating; sentence:—three persons to imprisonment for 10 years with labor, and another for 7 years with labor. N. A. R. vol. 2, page 323. Certain Mussulman prisoners convicted of a violent assault on a Hindoo zumeendar and his dependants, attended with arson and homicide, were sentenced to imprisonment with labor in irons for 14 years. N. A. R. vol. 5, page 83. On a charge of murder, the prisoners were convicted of a culpable assault on the deceased, in attempting to press him as a begar, in consequence of which he was accidentally drowned; sentence:—one to 25 stripes and 3 years' imprisonment, and the other to 25 stripes and 2 years' imprisonment. N. A. R. vol. 1, page 142. Two prisoners, charged with highway robbery, were convicted of assault and taking property under color of being custom-house officers, and sentenced to 20 stripes and 3 years' imprisonment with labor. N. A. R. vol. 1, page 315. A prisoner convicted of an outrageous assault, and of having violently entered the prosecutor's house and pursued and insulted his wife, was sentenced to imprisonment with labor for 7 years. N. A. R. vol. 2, page 333. A prisoner was convicted of beating the prosecutor with a large stick, and thereby breaking his arm; but he was discharged without further punishment in consequence of the imprisonment he had already undergone. N. A. R. vol. 3, page 309.

Precedents. Assaults.

Attended with homicide;

with arson and homicide;

with accidental drowning;

with forcibly seizing property under false pretences;

with forcible entry;

with bone fracture.

3876. Assault by a convict under sentence upon the magistrate, while in the execution of his duty; sentence:—15 stripes and 7 years' imprisonment with irons and handcuffs in addition to former sentence. N. A. R. vol. 1, page 329. A sepoy on guard was convicted of an attempt to assassinate the magistrate in the execution of his duty, from motives unknown, by presenting a musket at his body, and on its missing fire attempting to draw his sword for the same purpose; sentence:—imprisonment for life in the Alipore jail. N. A. R. vol. 2, page 357. A person was convicted of attempting to stab the magistrate while

By a convict on the magistrate.

By a sepoy on the magistrate with attempt to assassinate.

Attempt to stab a magistrate by a

person bearing arms in opposition to the magistrate's order, such order being in itself illegal.

in the execution of his duty. The prisoner was carrying arms during the mohurrum in opposition to an order of the magistrate, by whom he was required to give them up; on his refusal some peons endeavoured to disarm him, and the consequence was his attempt to stab the magistrate. The judge referred the case to the nizamut adawlut; but the court held that he was bound to pass sentence as the case was within his competence,* and returned the proceedings. The prisoner was then sentenced by the judge to 5 years' imprisonment with hard labor; and the nizamut adawlut confirmed the sentence, directing at the same time that the practice of depriving individuals of their weapons, being illegal, should be discontinued except in cases where there is reasonable ground to apprehend danger of a breach of the peace from their being carried by their owners. N. A. R. vol. 3, page 196.

* *v. para.* 3869.

Assault on a moonsiff, with resistance of process.

Four persons were convicted of violently assaulting a moonsiff, while in the execution of his duty, and resisting and destroying the process of the civil court. They were sentenced, one to imprisonment without labor and irons in the civil jail for 1 year, and a fine of 1000 rupees or further imprisonment for 1 year; two to the same imprisonment for 1 year and a fine of 200 rupees; and the fourth to imprisonment with hard labor for 18 months. N. A. R. vol. 2, page 304.

Assault by a burkundaz upon the darogah.

A police burkundaz, in a quarrel with the darogah, fetched his blunderbuss (not proved to be loaded), and threatened to shoot him. The court, deeming him guilty of violent and insubordinate behaviour to his superior officer, and not being satisfied that his intent was murderous, sentenced him to be imprisoned without labor and irons for 6 months. N. A. R. vol. 2, page 402.

By police officers upon an old man.

3877. A police darogah convicted of having ordered one of his inferior officers to beat the deceased, an old man aged 70 years, was acquitted of murder, as there was no proof that the beating occasioned the death; but was sentenced to one year's imprisonment, and dismissal from office. N. A. R. vol. 1, page 341.

Case of acquittal from insufficiency of evidence.

3878. Two prisoners were convicted and sentenced by the commissioner to 5 years imprisonment for an aggravated assault, attended with wounding, plundering, and abduction; but were acquitted by the nizamut adawlut on a revision of the proceedings; the court with reference to the improbable nature of the charge, and the discrepancies in the depositions of some of the witnesses, deeming the evidence insufficient for conviction. N. A. R. vol. 4, page 41.

Maiming.

Castration.

3879. A prisoner convicted of castrating a boy with his consent, from which operation death ensued, was sentenced under all the circumstances of the case (the youth and ignorance of the prisoner, the absence of all malice, the express desire of the deceased, and the fact that such operation was not unusual among hermaphrodites) to imprisonment for 2 years. N. A. R. vol. 3, page 17.

Cutting off wife's nose.

3880. The prosecutrix entered into a written agreement with her husband, the prisoner No. 1, authorizing him to cut off her nose, or otherwise maim her, in the event of her acting improperly. Detecting her in adulterous intercourse, he cut off her nose; and being prosecuted by her, he was convicted of that offence, and sentenced to imprisonment for 5 years: and No. 2, of aiding and abetting in that offence, to imprisonment for 3 years. N. A. R. vol. 1, page 296.

Cutting off the noses of uncle's

A prisoner, convicted of cutting off the noses of his uncle's

widow and her paramour, pleaded the criminal intercourse of the parties as a justification; but the law officers rejected this plea on the ground that he did not stand to his uncle's widow in the relation of a mohrim, *i. e.* one to whom it is permitted to enter the haram. The act was premeditated and deliberately executed; and the prisoner was sentenced to imprisonment and hard labor in banishment for 7 years. N. A. R. vol. 1, page 327.

widow and her paramour.

3881. A prisoner was tried for cutting off the ear of a man who had burglariously entered his house during the night, and was acquitted as no guilt was considered to attach to the act. N. A. R. vol. 3, page 285.

Cutting off the ear of a thief.

3882. A prisoner was convicted of cutting off his wife's hand; but no punishment was awarded in consequence of the prayer of the injured party that her husband should be released. N. A. R. vol. 1, page 344.

Mutilation of wife; punishment remitted at her request.

3883. A girl, 12 years old, was accused of cutting off the membrum virile of her husband. There was no doubt of her guilt; but the husband filed a razeenamah absolutely renouncing all claims upon the prisoner; and the law officers declared her not liable to any punishment both on account of her non-age, and because, as the act constituted a private not a public wrong, and as the individual injured relinquished his claim, the public prosecutor had none whatever. The court did not concur in the futwa, but judged themselves incompetent under the existing law to punish, and therefore released the prisoner.(*a*) N. A. R. vol. 2, page 29.

Mutilation of husband; no punishment inflicted from defect in the law.

Wounding.

3884. A prisoner convicted of wounding the prosecutor's child with intent to murder, and of robbing it of its ornaments, was sentenced to imprisonment for life. N. A. R. vol. 3, page 195. In a similar case in which the prisoner was guilty of atrocious cruelty, he was sentenced to 39 stripes and imprisonment in transportation for life. N. A. R. vol. 1, page 332.

WITH INTENT TO KILL, in prosecution of theft;

3885. The prisoner overheard his wife making an assignation with the prosecutor, and lay in wait for them; and as he found them in the act of adultery, cut at them with his sword with intent to kill both; but they effected their escape without being severely wounded. The law officers declared him entitled to his release. The commissioner considered that the lying in wait with a murderous intent deprived the prisoner of that degree of excuse which warranted acquittal; but the nizamut adawlut, agreeing with the law officers, directed his immediate discharge. N. A. R. vol. 4, page 98. A prisoner convicted of wounding his wife with intent to kill, in consequence of her persisting in an adulterous intercourse with another man, was sentenced to imprisonment with labor for 5 years. N. A. R. vol. 2, page 421.

on account of wife's adultery;

3886. A prisoner, convicted of wounding with intent to kill, from motives of jealousy, by cutting the throat of a woman with whom he had cohabited, was sentenced to 14 years' imprisonment with labor. N. A. R. vol. 3, page 162. In a case of a prisoner committed for trial on a charge of "severely wounding," it was held that the commissioner was not com-

on account of jealousy;

(*a*) Such cases have since been provided for by section 3, Regulation IV. 1822. See para. 1530.

petent to convict and sentence him for the more serious offence of "wounding with intent to murder." It appeared that the jealousy of the prisoner was excited by observing the admission of another person to share in the favours of a woman with whom he cohabited: and that he therefore took an opportunity during the night of wounding them so severely that they narrowly escaped with their lives. Under these circumstances the court were of opinion that the prisoner should have been committed under sect. 2, Regulation XII. 1829, on the charge of wounding with intent to kill; and accordingly annulled the former commitment, and the proceedings on the trial, and directed him to be re-committed and put on his trial on that charge. He was accordingly re-tried, and sentenced by the commissioner to 14 years' imprisonment, under cl. 3, sect. 2, Reg. XII. 1829. The nizamut adawlut, deeming the prisoner convicted of a deliberate intent to commit murder, annulled the sentence as inadequate, and sentenced him to be imprisoned for life. N. A. R. vol. 4, page 59.

on suspicion;

3887. A prisoner was convicted of dangerously wounding his wife with intent to kill her. His own account was that he was actuated by motives of jealousy; but it was held that his suspicions, had there been any cause for them, could not have justified him in going armed and avenging himself in such manner. He was sentenced to 14 years' imprisonment in banishment with hard labor. N. A. R. vol. 2, page 211.

from revenge;

3888. A prisoner was convicted of wounding his infant daughter with intent to kill her, and throwing her as dead at the door of a person with whom he had quarrelled, under the notion that the guilt of her innocent blood would lie on the head of his enemy; sentence:—imprisonment for 7 years. N. A. R. vol. 1, page 340. A prisoner was convicted of wounding with intent to kill; but acquitted of the murder of the deceased person, in consequence of a doubt whether the wounding was the sole and immediate cause of the death, which under the Mahomedan law must be established in order to warrant kisas; sentence:—imprisonment for life. N. A. R. vol. 1, page 272. Prisoner convicted of wounding with intent to murder, the apparent motive being enmity against the wounded person, who had been appointed to check his expenditure, and had exercised a vigilant supervision over him; sentence:—imprisonment with hard labor for life in the Alipore jail. N. A. R. vol. 3, page 279.

from enmity;

in revenge for refusing to have criminal connection;

3889. A prisoner having been convicted by the commissioner of wounding with intent to kill his sister-in-law (for refusing to have connection with him), and sentenced to 14 years' imprisonment with labor, the nizamut adawlut, on a revision of the proceedings, deemed the sentence inadequate, and sentenced the prisoner to imprisonment for life. N. A. R. vol. 4, page 81. So, in another case of the same nature, where the commissioner passed sentence of imprisonment with labor for 7 years,' the nizamut adawlut commuted it to imprisonment for life in the Alipore jail. N. A. R. vol. 4, page 175.

in a quarrel;

3890. A prisoner was convicted of wounding his wife with intent to kill, being incensed at her on some account which did not clearly appear. Though little injury resulted from the wounds, he was sentenced to 14 years' imprisonment with hard labor. N. A. R. vol. 2, page 207. A prisoner was convicted of wounding his wife in consequence of a quarrel with her; and the sentence passed on him by the session judge was enhanced from 2

to 7 years' imprisonment with labor in irons.(a) He would have been convicted of wounding with intent to kill, had not the session judge omitted to state to him that part of the charge which denoted the aggravating circumstances of his crime. N. A. R. vol. 5, page 162.

3891. Prisoner convicted of wounding with intent to kill, the motive unknown; sentence:—imprisonment with labor for 10 years. N. A. R. vol. 2, page 269. In a similar case, the sentence was imprisonment for 10 years with hard labor in banishment. N. A. R. vol. 3, page 17. from motives unknown;

3892. A prisoner, convicted of severely wounding the prosecutor with a sword in revenge, was sentenced under sect. 4, Reg. XVII. 1817, in opposition to the futwa which acquitted on the ground of there being but one eye-witness besides the prosecutor, to imprisonment with hard labor for 7 years. N. A. R. vol. 2, page 239. WITHOUT MURDEROUS INTENT, from revenge;

3893. A prisoner convicted of severely wounding a person, who he alleged had an improper intimacy with his wife, and also wounding slightly his wife's grandmother, the intent to kill not being proved, was sentenced to imprisonment with labor and irons for 7 years. N. A. R. vol. 6, page 188. from suspicion of dishonor:

3894. A prisoner, convicted of wounding his wife with a dao on slight provocation, was sentenced, notwithstanding the prosecutrix waived her claim and prayed for his release, to imprisonment for 5 years with hard labor. N. A. R. vol. 1, page 367. in a quarrel;

3895. A prisoner, convicted of severely wounding five persons with a sword and spear, was sentenced to imprisonment for life in consequence of the aggravated nature of the offence. In this case, two other persons were committed for trial for having deliberately cut off the hands of the prisoner, after he had perpetrated the above acts; but it appeared that they did so with a view to his apprehension and in self-defence; and the nizamut adawlut, considering their conduct meritorious, and not such as to have warranted their being committed for trial, ordered their immediate release and rewarded them with 50 rupees each. N. A. R. vol. 1, page 310. A prisoner convicted of enticing a woman into a jungle, and leaving her there after so severely wounding her as to deprive her of sense, from some motive not ascertained, was sentenced to imprisonment with labor and irons for 10 years. N. A. R. vol. 6, page 198. from motives unknown;

3896. The prisoner having wounded the prosecutors, who entered his house and attempted to seize him without a legal process, was not sentenced to any punishment. N. A. R. vol. 2, page 407. in self-defence.

Maltreatment.

3897. A prisoner, convicted of blinding his wife with a hot iron on slight provocation, was sentenced to imprisonment with hard labor for 14 years. N. A. R. vol. 2, page 427. Blinding.

A prisoner convicted of atrocious cruelty towards a boy, in beating him, and thrusting a stick besmeared with chillies up his anus, thereby occasioning his death, was sentenced to Attended with homicide;

(a) The session judge was informed, that his sentence was illegal under section 8, Regulation II. 1834; as imprisonment for two years should be without irons and with labor commutable to a fine.

with torture and homicide; imprisonment for life in the Alipore jail. N. A. R. vol. 3, page 97. In a case of gross maltreatment and torture (apparently to extort a confession of theft) which ended in the death of the person abused, the prisoners were convicted of aggravated culpable homicide, and sentenced, the principal to imprisonment for 14 years, three for 10, one for 7, and one

with torture; for 2 years, with labor. N. A. R. vol. 2, page 378. A woman convicted of maltreatment of a female slave, was sentenced to imprisonment for 12 months; and the slave, in consideration of the injurious treatment which she had experienced from her mistress, was declared

with violence. free. N. A. R. vol. 1, page 55. A prisoner convicted of extorting confessions by violence was sentenced to imprisonment for 3 years with labor and irons. N. A. R. vol. 3, page 310.

By police officers. 3898. The prisoners, who were the darogah, mohurir, and burkundazes of a police thana, were convicted of gross maltreatment and torture to extort a confession on a false charge of dacoity; and were sentenced, the darogah and mohurir for ordering and permitting the torture to 14 years' imprisonment without labor and irons; two burkundazes for actually inflicting the torture to 14 years' imprisonment with labor and irons; and one for being present aiding and not preventing it to imprisonment for 3 years without irons, and a fine of 50 rupees in lieu of labor. N. A. R. vol. 6, page 18. A police darogah was convicted of oppression and maltreatment of eighteen persons charged with dacoity, by confining them in a small room for four days; and was sentenced to imprisonment in the civil jail for 6 months, and a fine of 200 rupees commutable to a further term of imprisonment for 6 months; and measures were taken to prevent his future employment in the public service. N. A. R. vol. 5, page 75.

Mahomedan law.

Cases in which retaliation is incurred. 3899. Maiming and other injuries not affecting life entitle the party injured in certain cases to retaliation, in others to fine. The former is incurred only when strict equality can be maintained in effecting the retribution, and when the offence is wilful,—the intention being judged of by the circumstances exhibited in evidence without regard, as in cases of homicide, to the weapon or instrument used. In order to preserve the equality necessary to kisas, the condition of the person injured, and that of the person to be retaliated upon, must be the same; and there must be a certainty that the consequences of the retaliation will not be more severe than those of the original injury. On these principles retaliation cannot be claimed, if one party be a man and the other a woman; or one a slave, the other free; or where both parties are the slaves of different persons and of different value; nor is the right limb to be amputated for the left: nor a sound member for an unsound one; nor are dismemberments to be made except at the joint, from the difficulty of maintaining equality, as well as the danger to life in enforcing it: for the same reason it is not allowed in cases of fracture or injury to the bones, excepting the teeth which may be extracted with safety. A difference of religion, however, does not bar the demand for retaliation; as the Mussulman and infidel subject are considered to be on an equality with respect to personal protection, and the payment of fines.

Cases in which the injured party is entitled to pecu- 3900. Cases in which retaliation is not incurred subject the offender if the offence is wilful, or his âkilah if it is accidental, to the payment of *arish*, or the fine of blood in case

short of life; the amount of which, in some cases of severe injury, is specifically fixed, and where a sense has been destroyed is equal to diyut. In minor cases the amount of the fine is adjusted by supposing the wounded person a slave, and ascertaining his difference of value with or without the wound he has received. niary compensation.

3901. Both kisas and arish, for personal injuries not affecting life, are open to composition between the parties; and the injured person may in either case remit the penalty.(a) In both cases the penalty may be compounded or remitted.

(a) Harington's Analysis, vol. 1, page 265. Hedaya, book 49, chap. 3.

NOTE.

The term assault is used in regulation law in the vulgar acceptation of the word rather than in the legal sense of the English code; the offences included in the latter under the heads assault and battery are designated by the former as assault and wounding. In English law,—an *assault* is an attempt or offer with force or violence to do a corporal hurt to another; and the act must be accompanied with such circumstances as denote at the time an intention, coupled with a present ability, of using actual violence against the person of another. If the defendant's demeanor naturally impressed the plaintiff with the idea that he was about to strike him, it is an assault, notwithstanding his real intention was to do him no harm. The injury need not be direct from the hand of the party; as there may be an assault by encouraging a dog to bite; so, by exposing a person to the inclemency of the weather; or by an unlawful imprisonment or detention of the person. Mere words however can never amount to an assault. So, if a man strike at another, but at such a distance that he cannot by possibility touch him, it is no assault: but if A advance in a threatening attitude towards B to strike him, and be stopped just before he is near enough for his blow to take effect, it is an assault. A *battery*, in the legal acceptation of the word, includes beating and wounding. To beat, also, in the legal acceptation of the term, means not merely to strike forcibly with the hand, or a stick, or the like, but includes every touching or laying hold (however trifling) of another's person or clothes in an angry, revengeful, rude, insolent or hostile manner: as, for instance, thrusting or pushing him in anger; holding him by the arm; spitting in his face; jostling him out of the way; pushing another man against him; striking a horse upon which he is riding, whereby he is thrown; or the like. If a man strike at another with a cane or fist, or throw a bottle at him, or the like, if he miss him, it is an *assault;* if he hit him, it is a *battery*. A *wounding* is where the violence is so great as to draw blood, by striking or stabbing him with a sword, knife, or other instrument, or by shooting, or by striking him with a cudgel, or fist, or the like; and includes incised wounds, punctured wounds, lacerated wounds, contused wounds, and gun-shot wounds. It is a good defence to prove that the alleged battery happened by misadventure (but this is subject to the general rule given in para. 86); or that it was an amicable contest, as in wrestling; or that it happened by accident whilst the defendant was engaged in some sport or game which was neither unlawful nor dangerous. So, it is a good defence, that the prosecutor assaulted or beat the defendant first, and that the defendant committed the alleged battery merely in his own defence; or in the defence of another person: but then it must be such only as was necessary for the defence, and not excessive, or by way of revenge after all danger from the assailment was passed: also, it is a sufficient answer to this defence, to prove that the first assault was justifiable. The defendant may justify a battery by proving that he committed it in defence of his possession; but then the force used must not be excessive, or more than was actually necessary. Lastly, it is a good defence to prove that the defendant, as an officer of justice, arrested the prosecutor by virtue of a certain process, which is the alleged battery complained of; but the officer cannot justify any actual force except in case of resistance attempt at rescue, and then no greater degree of force than was necessary to secure the prisoner. *Comyns, Russell, and Archbold.*

SECTION IV.

OF HOMICIDE AND MURDER.

When bodies are sent to civil surgeon, all information to be given.

3902. Magistrates, sending bodies to the civil surgeons for examination, are to furnish them with all available information regarding the alleged cause of death. C. O. No. 152 of vol. 3. In all cases where persons are known or suspected to have died from the effects of poison, the magistrate is to communicate to the civil surgeon, at the time of sending the body for examination, the name or any facts calculated to throw light on the nature of the poison, which is supposed to have been the cause of death. C. O. *L. P.* No. 3, April 25 1856, and *W. P.* No. 546, April 12, 1856.

Mode of proceeding in such trial in the sessions court.

* r. *para.* 1161.

3903. In trials for murder before the sessions court, after the proceedings have been concluded in the prescribed manner,* the law officer of the court, who has been present during the trial, is to be required by the judge to declare whether the prisoner is convicted of the charge against him, and is to subscribe his answer on the record of the court's proceedings. If the law officer declares the prisoner to be not guilty, the judge is to pass an immediate sentence of acquittal, and to order him to be discharged; unless he sees cause to disapprove such opinion, in which case he is to refer the proceedings on the trial for the sentence of the nizamut adawlut. If the answer of the law officer declares the prisoner to be convicted of wilful murder (*katl-âmd*), the judge, without making any reference to the heir or heirs of the slain, is to require the law officer to declare the punishment to which the prisoner convicted would be liable according to the Mahomedan law, supposing all the heirs of the slain entitled to prosecute the prisoner for kisas to have attended and prosecuted him, at an age competent to demand kisas, and to have demanded kisas. The futwa of the law officer upon this reference is also to be subscribed on the record of the court's proceedings; and whether the futwa declare the prisoner liable to suffer death, as must be the case in most instances of conviction of wilful murder under the supposed demand of kisas by the heirs of the slain; or whether it declare the prisoner not liable to capital punishment from the heirs of the slain not being legally entitled to demand kisas, or the failure of retaliation from the parties standing in the relation of parent and child, or master and slave, or otherwise; the judge is in either case to refer the proceedings for the sentence of the nizamut adawlut. Should the answer of the law officer to the first reference acquit the prisoner of wilful murder, but convict him of homicide of any one of the four denominations distinguished in the Mahomedan law (viz. *shabah-âmd*, *katl-khata*, *katl-kaim-makam-ba-khata*, and *katl-ba-sabub*), the law officer is to declare the prescribed penalty for the same according to the Mahomedan law; and if his futwa should declare the diyut or price of blood to be the whole or part of the legal punishment, the sessions court is to commute the fine to imprisonment [*v. infra*]; and its sentences in such

If the law officer acquits.

If he convicts of wilful murder, whether he declares the prisoner liable to capital punishment or not, the trial is to be referred.

If the law officer convicts of homicide of any one of the four denominations distinguished in the Mahomedan law.

instances, as in all others according to the existing regulations, are to be carried into execution without reference to the nizamut adawlut, if for temporary imprisonment; or referred to that court if for imprisonment for life; subject to the general provision* for referring to the nizamut adawlut all trials wherein the sessions courts disapprove of the futwas of their law officers. *Beng.* and *Ben.* Reg. IV. 1797, sect. 3. *Ced. Prov.* Reg. VII. 1803, sect. 15, cl. 2.

* *v. para.* 1286.

In a case of justifiable homicide, it is no ground of reference that the prisoner secretly made away with the body.

3904. Where a session judge, concurring with the assessors in a verdict of justifiable homicide, referred the trial to the nizamut adawlut, because he was in doubt whether the subsequent conduct of the prisoner, in making away with the body and denying that he had done so in the sessions court, did not render him amenable to justice for the concealment of the homicide;—it was held that this, besides that it had formed no portion of the charge, was not a sufficient ground for reference; and the case was returned to the judge to pass his own order on it. N. A. R. vol. 6, page 78.

Trial must be referred as to any of the participes criminis.

3905. On a conviction of murder the session judge must refer the case to the sudder court, whether the principal be on trial or not, as to all the participes criminis. Reports *L. P.* 1854, part 2, page 725.

Judge cannot sentence accessary after murder; but magistrate may punish for privity.

3906. In the report of a trial for murder the nizamut adawlut observed that the judge had convicted the prisoners of privity to murder, whereas the confessions in the foujdaree proved them to have been accessaries after the fact. The court held that the former offence was punishable by the magistrate; and that the latter took the case out of the judge's jurisdiction. And as the judge reported facts, which established an offence beyond his power to decide finally, the sentence was quashed and he was directed to refer the trial. Reports *L. P.* 1855, part 2, page 529.

The punishment of diyut is commutable by the sessions courts to imprisonment with hard labor for any term not exceeding seven years;

3907. A doubt having been entertained whether the above provisions relative to culpable homicide, not amounting to wilful murder, empower the sessions courts to commute the diyut, or fine of blood, prescribed by the Mahomedan law in such cases, to any period of temporary imprisonment, or whether the discretion of such courts, in the cases referred to, is limited by the general rule contained in cl. 7, sect. 2, Reg. LIII. 1803, which restricts the sessions courts, in cases not specially provided for, from passing a final sentence exceeding corporal punishment and imprisonment with hard labor for the term of seven years:—it is hereby explained that the above restriction is applicable to all cases of commutation for diyut on a conviction before a sessions court of culpable homicide, not amounting to wilful murder, under the above provisions, or any other regulation in force. If in any instance the above stated punishment appears insufficient, the judge is to refer the trial to the nizamut adawlut. Reg. XVII. 1817, sect. 7.

but corporal punishment cannot be adjudged in such cases.

3908. The above provision does not authorize the infliction of corporal punishment in cases of culpable homicide [consequently no additional period of imprisonment can be given in lieu thereof under sect. 2, Reg. II. 1834]. C. O. No. 293 of vol. 1. Const. No. 352.

Rule for taking the futwa of the law officer.

3909. In trials for murder in the sessions courts, an additional question is to be put to the law officer, whether the crime of wilful murder is proved against the prisoner or

prisoners or any of them; and the law officer is to subscribe a distinct concise answer, that it is proved or that it is not proved; after which he is to be called on for his general futwa in the case. C. O. No. 228 of vol. 1.

How the law officers of the nizamut adawlut are to deliver their futwa.

3910. In all cases referred under the above provisions to the nizamut adawlut, the law officers of that court, provided they are of opinion that the prisoner is duly convicted of murder, are to write their futwa* upon the case referred to the law officer of the sessions court; assuming always that all the heirs of the slain entitled to prosecute for kisas attended and prosecuted, at an age which rendered them competent to demand kisas, and that they demanded it. But if they are of opinion that the prisoner is not duly convicted of wilful murder, they are to state their reasons for such opinion; and whether they consider the prisoner altogether innocent, or convicted of homicide under any of the four denominations distinguished by the Mahomedan law, adding in the latter case the legal penalty to which the prisoner is liable: and the nizamut adawlut, after considering their futwa so given, with the whole of the proceedings on the case, are either to require further evidence, if they see occasion, or to pass such final sentence as appears consonant to justice, and comformable to the Mahomedan law with the exceptions and modifications authorized by the regulations. If, in any case not provided for by the regulations, the Mahomedan law appears to the court repugnant to natural justice, they are notwithstanding to adhere thereto, if in favor of the prisoner, in the case before them; or, if against the prisoner, to grant such remission or mitigation of punishment, as appears just and proper according to the circumstances of the case;† and at the same time to propose a new regulation to provide against a recurrence of the case. *Beng. and Ben.* Reg. IV. 1797, sect. 4. *Ced. Prov.* Reg. VIII. 1803, sect. 11.

* *For cases in which futwa is not required, see para.* 1480.

The nizamut adawlut are to call for further evidence, or to pass final sentence.

How far the Mahomedan law is to be adhered to.

† *v. para.* 1457.

A second futwa unnecessary if first futwa convicts on violent presumption.

3911. It is not necessary for the nizamut adawlut to call for a second futwa from its law officer in cases of murder, when the first futwa convicts of murder on grounds only of violent presumption (ghalib-oos-zana). Resolution N. A. February 27, 1852.

The intention of the criminal, and not the manner or instrument of perpetration (except as evidence of the intent) is to be the rule for determining the punishment.

Wilful homicide by poison or by drowning is included in the above rule.

3912. In trials for murder, the law officers are to deliver their futwas according to the doctrines of Yoosuf and Mahomed. The distinctions, however, made by those Imams, and by Huneefah, as to the mode of committing murder are not to be adhered to by the nizamut adawlut; but the intention of the criminal, either evidently or fairly inferrible from the nature and circumstances of the case, and not the manner or instrument of perpetration (except as evidence of the intent), is to constitute the rule for determining the punishment. It is further declared that wilful homicide by poison, or by drowning, when the intention of poisoning or drowning is evident, is included in the above rule; and that in all such cases the nizamut adawlut (whatever may be the futwa of their law officers) are to sentence the prisoner to suffer death, provided they judge him fully convicted of wilful murder, or unless they consider him a proper object for mercy.‡ *Beng. and Ben.* Reg. IX. 1793, sect. 75; and Reg. VIII. 1799, sect. 5. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 1.

‡ *v. para.* 1457.

Homicide in resistance of legal authority is murder.

3913. When an officer, engaged in the execution of civil process, is justified by his authority, and exercises that authority in a legal manner, if he be resisted, and in that resistance any one of his party is killed, the killing amounts to murder. Reports *W. P.* 1856, part 1, page 531.

When death is caused by violence, the commitment should be for murder.

3914. Whenever death is caused by violence without any obvious justifying or extenuating cause, the commitment should be for murder. It is left to the court trying the case to convict only of culpable homicide, if the facts be found to justify such a finding. Reports *L. P.* 1851, page 1743.

Erroneous homicide.

3915. Any person who is convicted of having deliberately and maliciously intended to murder one individual, and of having in the prosecution of such intention accidentally killed another individual, is on account of the murderous intention and actual homicide liable to the punishment of murder, in like manner as if he had killed the person intended to be murdered; any distinction in the Mahomedan law to the contrary notwithstanding. * In such cases the law officers of the sessions court, and of the nizamut adawlut (to which court all trials of this description are to be referred), are to be required to state what punishment the prisoner would have been liable to, if he had committed the murder intended by him; and if their futwa declares him in such case liable to suffer death, or if under the futwa so given, and the modifications of the Mahomedan law contained in the above provisions or any other regulation, the prisoner is liable to suffer death, the nizamut adawlut, provided it is established to their satisfaction that the prisoner intended to commit the crime of deliberate and malicious murder, and that the homicide charged against him was actually committed by him in the prosecution of such murderous intention, are to sentence the prisoner to suffer death, unless they consider him a proper object of mercy, and deserving of pardon or a mitigation of punishment.† *Beng. and Ben.* Reg. VIII. 1801, sect. 2. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 2.

(*) *The term "erroneous homicide" is not to be used in commitments, as it does not show the degree of criminality. The main point which should be shown in the finding is whether the homicide was culpable or not culpable, which does not appear from the term erroneous. Reports L. P. 1851, page 1621.*

† *v. para.* 1457.

The foregoing rule is applicable to all cases of accidental homicide, wherein the criminal intention of the party, if carried into execution, would subject him to a sentence of death.

3916. The rule contained in the preceding clause is to be considered equally applicable to any other cases of homicide, which are declared by the law officers of the sessions court, or nizamut adawlut, to be within the Mahomedan law of katl-khatâ, kutl-káim-makáim-ba-kháta, or other legal denominations of accidental homicide; but in which the prisoner is clearly convicted of having committed the homicide proved against him with a murderous intention, such as if carried into effect would have subjected him to a sentence of death; or with a deliberate intention to commit any crime, which if committed in pursuance of the prisoner's criminal design would have rendered him liable to a sentence of death. *Beng. and Ben.* Reg. VIII. 1801, sect. 3. *Ced. Prov.* Reg. VIII. 1803, sect 10, cl. 3.

The rule for commutation of diyut is not applicable to such cases.

3917. Such part of sect. 3, Reg. IV. 1797 [para. 3903], as authorizes the sessions court, in cases of katl-khata, and other cases of accidental homicide, when the prisoner is declared liable to the diyut, or price of blood, to commute such price to imprisonment, is not to be considered applicable to any of the cases noticed in the two preceding paragraphs. A prisoner is not liable to suffer any imprisonment, or other punishment, in the cases of accidental homicide mentioned in the section above quoted, although the diyut is declared by the law officers to be payable under the Mahomedan law, if the homicide clearly appears to have been committed by misadventure in the prosecution of a lawful act and without any malignant intention. *Beng. and Ben.* Reg. VIII. 1801, sect. 6. *Ced. Prov.* Reg. VIII. 1803, sect. 10, cl. 6.

Homicide by misadventure in the prosecution of a lawful act and without malignant intention subjects to no punishment.

Want of due caution.

3918. It cannot be held to be simple misadventure, if the accused person has shown a want of due caution, and a recklessness of consequences. Reports *L. P.* 1856, part 2, page 787.

The magistrate may release the accused in cases of accidental or justifiable homicide:

3919. The magistrate is authorized to release the accused, if the homicide, in which he appears to have been concerned, is clearly shown, from the whole of the evidence, to have been accidental, or justifiable under the Mahomedan law and the regulations. Reg. IX. 1807, sect. 9, cl. 1.

and should apply to the law officer, if in doubt as to the law.

3920. In such case, if the magistrate is doubtful as to the law, he should apply to the law officer for assistance. Const. No. 617.

If act be felonious, the homicide is murder.

3921. Prisoners having been engaged in the commission of a felonious act terminating in homicide, must be regarded as accomplices in the crime of wilful murder. Reports *W. P.* 1853, part 2, page 1500.

Cattle trespass.

3922. Under the Mahomedan law it is culpable homicide, if a person whose cattle are trespassing on the crops of another is killed by the owner of the crops. Reports *L. P.* 1852, part 1, page 683.

Where the wounds, but for bad health, would not have proved fatal.

3923. Where the medical evidence showed that the deceased would not have necessarily died from the effects of the wound, had it not been for the bad state of his health, and where there was no proof of any intention to take life, the court held that the prisoner could not be convicted of wilful murder, but passed sentence for culpable homicide. Reports *L. P.* 1856, part 1, page 936. Reports *W. P.* 1856, part 1, page 404. *See para.* 3993.

Homicide of murderers, robbers, or thieves, in self-defence, or defence of property, is justifiable.

3924. Persons who wound or slay murderers, robbers, or thieves, in their own defence, or in defence of their property, are not to be proceeded against, or placed in restraint, or required to give bail, except under special orders of the magistrate; police officers are strictly prohibited from acting in violation of this rule, under penalty of dismission from office. Reg. XX. 1817, sect. 25, cl. 10.

So, homicide of such persons by police officers, in certain cases.

3925. If any police officer, entrusted with or assisting in the execution of any legal warrant for the apprehension of a person charged with murder, robbery, or other heinous crime, or pursuing a robber or murderer immediately after the commission of the crime, or resisting him during his attempt to perpetrate the crime, wounds or slays the offender in endeavouring to apprehend him, such police officer is to be held guiltless of any criminal act. Reg. XX. 1817, sect. 26, cl. 14.

Regard is not to be had to the grounds of personal distinction and exception to the general rules of natural justice, held by the Mahomedan law.

3926. In every case of wilful murder, wherein the crime appears to the nizamut adawlut to have been fully established against the prisoner, but the futwa of the law officers of that court has declared the prisoner not liable under the Mahomedan law to suffer death by kisas, solely on the ground of the prisoner's being father or mother, grandfather or grandmother, or other ancestor of the slain, or of the heir of the slain, or one of the heirs of the slain being a child or grandchild or other descendant of the prisoner, or of the slain having been the slave of the prisoner, or of any other person, or a slave appropriated for the service of the public, or on any similar ground of personal distinction and exception from the general rules of natural justice; the nizamut adawlut (provided they see no alleviating circumstances in the case) are to sentence him to suffer death, as if the futwa of their law officers had declared him liable to kisas, or to suffer death by seasut, as authorized by the Mahomedan law in all cases of wilful murder, under the discretion vested

in the magistrate with regard to this principle of punishment for the ends of public justice. *Beng. and Ben.* Reg. VIII. 1799, sect. 2. *Ced. Prov.* Reg. VIII. 1803, sect. 15.

The desire of the party slain to be put to death is no justification of wilful homicide:

3927. It does not justify any prisoner convicted of wilful homicide, that he or she was desired by the party slain to put him or her to death; and in the event of the prisoner being convicted of the fact to the satisfaction of the nizamut adawlut, and of their seeing no alleviating circumstances in the case, they are to sentence him or her to suffer death, whatever may be the futwa of their law officers under the Mahomedan law; which in this instance also, although it withholds kisas, gives a full latitude to the magistrate in the discretionary punishment of tazeer or seasut. *Beng. and Ben.* Reg. VIII. 1799, sect. 3. *Ced. Prov.* Reg. VIII. 1803, sect. 16.

e. g. assisting in the suicide of a leper.

3928. A Hindoo is liable to punishment for aiding and abetting in the suicide of a leper. Const. No. 985.

Attempt at suicide punishable by magistrate.

3929. Persons convicted of attempt at suicide are liable to discretionary punishment by the magistrate as well as by the session judge to the extent of their respective powers. Reports *L. P.* 1853, part 1, page 842.

Duelling.

3930. By the Mahomedan law, homicide by duelling, though wilful, being authorized by mutual consent, does not subject the person committing it to the penalty of wilful murder. But provision is made for such cases, when the prisoner appears deserving of punishment, by the above rule. In the case of a fatal duel, the magistrate may commit all parties to take their trial for murder; and, to authorize the commitment, it is not necessary that a complaint should be made by a private prosecutor. In this case no punishment was awarded in addition to the imprisonment which the accused had suffered before they were brought to trial, as it appeared that the surviving principal had received gross insults from the deceased, and that the seconds had used every endeavour to effect an accommodation. N. A. R. vol. 1, page 277.

Regard is not to be had to the justificatory plea of fornication on the part of or with the mistress or relation of the accused.

3931. It having been found, that in certain cases of murder the justificatory plea, that the person murdered was the mistress or relation of the prisoner, and detected in criminal intercourse with another man, or that the murdered man was found in criminal intercourse with the prisoner's mistress or relation, or generally speaking detected in fornication, has been upheld by the law officers in bar of capital or discretionary punishment, and has been declared to subject such prisoner to diyut only,—it is hereby enacted, that the law officers of the nizamut adawlut are to be called on to declare in such cases what the futwa would have been, if such plea had not existed; and the judge or judges sitting on the trial are to pass sentence under the general regulations and on consideration of all the circumstances of the case, the same as if no such plea had existed. Reg. IV. 1822, sect. 5.

Cases in which persons convicted of wilful murder are declared by the futwa not liable to suffer death on the ground of their accomplices being exempted from kisas.

3932. If the futwa of the law officers of the nizamut adawlut declare any person convicted of wilful murder not liable to suffer death, under the Mahomedan law, on the ground of one or more of his accomplices being exempted from kisas, under any of the circumstances recited above or on any similar ground of exemption; the nizamut adawlut are, notwithstanding such futwa, to sentence the prisoner to suffer death, if in their

judgment he is fully convicted, and there appear no alleviating circumstances in the case.

Accomplices, not the principal perpetrators, are liable to suffer death.

And wherever the accomplice in a wilful murder, though not the principal perpetrator of the murder, appears to the nizamut adawlut fully convicted and deserving of death, they are authorized, under the discretion given by the Mahomedan law in such cases, to sentence the prisoner to suffer death; whether the futwa of their law officers declare the same or otherwise. *Beng. and Ben.* Reg. VIII. 1799, sect. 4. *Ced. Prov.* Reg. VIII. 1803, sect. 17.

Administering poison with intent to murder, death not ensuing.

3933. No specific punishment has been prescribed by any regulation in force for the simple offence of administering poison with intent to murder, death not ensuing, the provisions of cl. 4, sect. 8, Reg. XVII. 1817 referring solely to the administering poison with intent to murder when accompanied by robbery, burglary, or theft, or attempt to commit the same. The first mentioned crime comes therefore under the general rule laid down in cl. 7, sect. 2, Reg. LIII. 1803, by which sessions courts are empowered to pass sentence not exceeding 7 years' imprisonment; [and to refer the trial to the nizamut adawlut, if in any instance, they consider such degree of punishment insufficient].* Const. No. 755.

* *v. paras.* 1285 *and* 1314.

Special cases.

Punishment of persons putting others to death on the ground of sorcery

3934. If any person or persons of the sutar caste, or of any other caste or persuasion within the British territories, puts any person to death on the ground of his or her being versed in or practising sorcery, such person or persons, on being convicted of the crime, are to be held guilty of murder, and are invariably to be punished accordingly: and if any persons actually form themselves into an assembly for the purpose of trying any man or woman on a charge of witchcraft, or any other charge, or cause such assemblies to be held; and any person or persons are in consequence put to death; they are to be considered to be principals or accomplices in the murder, and are to be dealt with accordingly. *Beng. and Ben.* Reg. IV. 1797, sect. 6. *Ced. Prov.* Reg. VII. 1803, sect. 34.

Persons holding an assembly for the trial of any charge, and putting persons to death, are guilty of murder.

Persons sacrificing infants, or persons not arrived at the age of maturity, by throwing them into the sea, or river, are to be held guilty of wilful murder, and are to be liable to sentence of death.

3935. A criminal and inhuman practice of sacrificing children, by exposing them to be drowned, or to be devoured by sharks, prevailed at the island of Saugor, and Bansbaria, Chogda, and other places on the Ganges. At Saugor especially such sacrifices were made at fixed periods, namely, the day of full moon in November and in January, at which time also grown persons devoted themselves to a similar death. Children, thrown into the sea at Saugor, were not generally rescued, as was the custom at other places; but the sacrifice was on the contrary completely effected with circumstances of peculiar atrocity in some instances. This practice, represented to arise from superstitious vows, was not sanctioned by the Hindoo law, nor countenanced by the religious orders or by the people at large, nor was it at any time authorized by the Hindoo or Mahomedan governments of India. The persons concerned in the perpetration of such crimes would therefore be clearly liable to punishment; and the plea of custom would be inadmissible in excuse of the offence; but for the more effectual prevention of so inhuman a practice, the following provisions were enacted: —If any person or persons wilfully, and with the intention of taking away life, throw or cause to be thrown into the sea, or into the Ganges, or into any other river or water, any infant, or person not arrived at the age of maturity, with or without his or her consent, in consequence whereof such person so thrown into the water

is drowned, or is destroyed by sharks or by alligators, or otherwise perishes; the person or persons so offending are to be held guilty of wilful murder, and on conviction are to be liable to the punishment of death; and all persons, aiding or abetting the commission of such act, are to be deemed accomplices in the murder, and are to be subject to punishment accordingly. The trials of prisoners convicted, as principals or accomplices, of the crimes specified in this section, are to be referred to the nizamut adawlut who are to pass sentence thereupon according to sect. 75, Reg. IX. 1793,* whatever may be the futwa of the law officers of that court; or to grant such remission or mitigation of punishment, as appears just and proper according to the circumstances of the case.† *Beng. and Ben.* Reg. VI. 1802, sects. 1 and 2.

* *v. para* 3912.

† *v. para.* 1457.

If the infant, or other person, is rescued, the criminals are to be held guilty of a high misdemeanor.

3936. If a child, or any person not arrived at maturity, is thrown into water, as stated in the preceding section, and is rescued from destruction, or by any means escapes from it, the persons who have been active in exposing him or her to danger of life, and all aiders and abettors of such act, are to be held guilty of a high misdemeanor; and on conviction are to be liable to such punishment as the sessions courts, under the futwas of their law officers, judge adequate to the nature and circumstances of the case. *Beng. and Ben.* Reg. VI. 1802, sect. 3.

Magistrates to be vigilant to prevent these practices.

3937. The magistrates of districts, wherein the sacrifice of children has been practised, are required to be vigilant to prevent the continuance of the practice; and are to cause the provisions of this regulation to be from time to time proclaimed at the places, and in the season, where, and when, such sacrifices have been effected. *Beng. and Ben.* Reg. VI. 1802, sect. 4.

Punishment of rajkumars causing their female infants to be starved to death.

3938. The magistrates were required to issue a proclamation throughout their respective jurisdictions, prohibiting the inhuman practice, then prevalent among the tribe of rajkumars, of causing their female infants to be starved to death: and declaring that if any rajkumar, after the publication of the proclamation, should designedly prove the cause of the death of his female child, by prohibiting its receiving nourishment, or in any other manner, such rajkumar should be liable to be tried as for murder. In such cases, the magistrate, on receiving information thereof upon oath, or such other information or proof as he deems sufficient to render the charge highly probable, is to cause such rajkumar to be apprehended; when, if it appears to the magistrate that the crime has been actually committed, and that there are grounds for suspecting‡ the prisoners to have been concerned in the perpetration of it, the magistrate is to cause him to be committed to prison to be tried before the sessions court; and is at the same time to take all other precautions, as usual, for securing the attendance of the original complainant or informant and of the witnesses; and the prisoner is to be tried as in other cases of murder. *Ben.* Reg. XXI. 1795, sect. 13. *Ced. Prov.* Reg. III. 1804, sect. 11.

‡ *v. para.* 979.

Punishment of persons putting their children to death in revenge for some insult or injury offered to

3939. Several instances having occurred in which persons were convicted of putting their children to death from an impulse of passion, with the intention of revenging themselves for a real or supposed insult or injury, offered to them by another person, under an idea that the guilt of shedding the blood of the innocent victim would lie on the head of the

them by another person.

person offering such insult or injury; proclamation was made, throughout the ceded provinces, declaring that any person who should be capitally convicted of putting to death his or her child or children, or of putting to death any other child or person, in consequence of a real or supposed insult or injury, would be invariably punished with death according to the provisions of the laws and regulations in the case. C. O. Nos. 42 and 55 of vol. 1.

Neglect of child, causing its death, subjects to diyut.

3940. The death of a child occasioned by the negligence of the person in charge of it, subjects such person to the payment of diyut, as incurred by the commission of katl-káim-makám-ba-khatá, or homicide by misadventure. N. A. R. vol. 1, page 382.

Brahmins.

Reasons for the enactment of the following rules.

3941. The reverence paid by the Hindoos to brahmins, and the reputed inviolability of their persons, and the loss of or prejudice to caste that ensues from proving the cause of their death, have in some places in the province of Benares been converted by some of the more unlearned part of them into the means of setting the laws at defiance, from the dread and apprehensions of the persons of the Hindoo religion, to whose lot it must frequently fall to be employed in enforcing against such brahmins any process or demands on the part of government. The devices, occasionally put in practice under such circumstances by these brahmins, are lacerating their own bodies either more or less slightly with knives or razors; threatening to swallow, or sometimes actually swallowing poison, or some powder which they declare to be such; or constructing a circular enclosure called a kurh, in which they raise a pile of wood or of other combustibles, and betaking themselves to fasting, real or pretended, place within the area of the kurh an old woman, with a view to sacrifice her by setting fire to the kurh on the approach of any person to serve them with any process, or to exercise coercion over them on the part of government or its delegates. These brahmins likewise, in the event of their not obtaining relief within a given time for any loss or disappointment that they may have justly or unjustly experienced, occasionally bring out their women or children, and causing them to sit down in the view of the peon who is coming towards them on the part of government or its delegates, they brandish their swords, and threaten to behead or otherwise slay these females or children on the nearer approach of the peon; and there are instances, in which, from resentment at being subjected to arrest or coercion or other molestation, they have actually not only inflicted wounds on their own bodies, but put to death with their swords the females of their families, or their own female infants, or some aged female procured for the occasion. Nor are the women always unwilling victims; on the contrary, from the prejudices in which they are brought up, it is supposed that in general they consider it incumbent on them to acquiesce cheerfully in this species of self-devotement, either from motives of mistaken honor, or of resentment and revenge, believing that after death they shall become the tormentors of those who are the occasion of their being sacrificed.—In order to put a stop to these abuses, it is enacted, that upon information in writing being preferred to the magistrate against any brahmin or brahmins, for establishing a kurh, or for being prepared to maim, wound, or slaughter his women or children, or any or either of them, in the manner described above, or in any manner substantially similar thereto, on account of any subject of discontent, or any other account whatsoever; in such case, upon oath being

If a brahmin establish a kurh, or make preparations to maim, wound, or slaughter his women, or children, a written notice is to be served on him by means of his relations, or by a

made to the truth of the information, the magistrate is immediately to address to the said brahmin or brahmins a written notice in the vernacular, and under his official seal, which notice is to be served on him or them by such of their relations, friends, or connections, as the magistrate may think fit, and have an opportunity of employing for the purpose; and in default of such relations, friends, or connexions of the said brahmin or brahmins, the magistrate is to cause the notice to be served by a single peon of the same religion; and the notice is to require the said brahmin or brahmins to remove the kurh and the women and people that may be placed in it; or to desist from any preparation towards wounding or slaughtering the women or children, according as either or both of these facts are charged in the information. The notice is also to contain a positive and encouraging assurance to the brahmin or brahmins in question, that on his or their complying with the principal exigence thereof, by removing the kurh and the person or persons therein, or by desisting from any preparation to wound or slaughter the women and children, and thereon repairing (as they may think fit) in person or by vakeel to the civil court, proper enquiry shall be made concerning the dispute that may have given occasion to the act or acts thus prohibited. But if the issuing of the notice has not the effect of inducing the said brahmin or brahmins to comply with the exigence thereof, a written return to that purpose is to be made and attested by the party or parties entrusted with the serving of it; and the magistrate is thereon to issue a warrant under his official seal and signature for the apprehension of the said brahmin or brahmins, specifying the misdemeanor and contumacy with which he or they stand charged; and the execution of the warrant is to be committed to peons of the Mahomedan religion, nor is any Hindoo to be sent on such duty. On the brahmin or brahmins against whom the warrant has been issued being brought before the magistrate, he or they are to be dealt with in the mode prescribed by section 5, Regulation IX. 1793*, respecting persons charged with crimes or misdemeanors; and if it appears to the magistrate on the previous enquiry, which by the said section he is himself directed to make, that the misdemeanor or misdemeanors charged (that is, the constructing of the kurh, or being prepared to wound or slay the women or children, according as either or both of these acts have been charged) were actually committed, and that there are grounds for suspecting† the prisoner or the prisoners respectively to have been concerned, either as a principal or an accomplice, in the perpetration of either or both of these acts; the magistrate is to cause him or them to be committed to prison or held to bail (according as the parties appear to have been principals or accomplices) to take his or their trial at the sessions, and is to bind over the informant or complainant and the witnesses to appear at the trial, in the manner prescribed in the aforesaid section. *Ben.* Reg. XXI. 1795, sects. 1 and 2.

single peon of the same religion.

If such notice has not the desired effect, a warrant is to be issued for their apprehension by means of Mussulman peons.

Magistrate how to proceed when the accused is brought before him.

* *v. para.* 370.

† *v. para.* 979.

3942. The sessions court is to conduct the trial of the brahmin or brahmins charged with the above offences in the manner prescribed in the regulations in respect to other offences; but, as the Mahomedan law cannot adequately apply to offences of this local nature, it is therefore provided and ordered, that where, in the opinion of the session judge, the charge of being a principal in respect to the constructing of a kurh, or to the having been prepared to wound or slay the women or children, is proved, the said judge is to sentence the prisoner to the payment of a fine equal to the amount of his annual income

Trial of such persons before the sessions court, and punishment to be inflicted by fine and security for good behaviour.

which is to be estimated according to the best information that the judge is able to procure respecting it; and on proof to the judge's satisfaction of the prisoner's being guilty only as an accomplice, he is to be sentenced to the payment of a fine equal to one-fourth of his estimated annual income. In all cases of parties being sentenced to the payment of such fines, they are to be committed to, and are to remain in jail until the amount thereof be paid, or until they shall have delivered to the sessions court, or after the said court's departure to the magistrate, full and ample malzaminee or security to pay the same within six months from the date of their release; and such parties, before their enlargement, either in consequence of their having liquidated, or having entered into security for the payment of the fine imposed on them, are to deliver into the sessions court, or in its absence to the magistrate, fiulzaminee or satisfactory security from one or more creditable persons not to offend in like manner in future. *Ben.* Reg. XXI. 1795, sect. 3.

Such sentences to be always reported within 10 days to the nizamut adawlut.

3943. All sentences passed by the sessions court under the above section, without however any intermediate suspension of their execution, are to be transmitted within ten days after their being passed to the nizamut adawlut, which court may order such mitigation and restitution of the fine or fines thereby imposed, as may be thought proper; but until the order be issued by the nizamut adawlut, the sentence of the sessions court is to be considered in full force, and to be carried into effect accordingly. *Ben.* Reg. XXI. 1795, sect. 4.

In case such brahmin resists the warrant of the magistrate, or absconds, or conceals himself, the magistrate is to attach his landed property through the collector.

3944. In case any brahmin, against whom the magistrate issues the warrant prescribed in sect. 2, refuses to obey, or resists or causes to be resisted, the peons deputed to serve it, or escapes after being taken by them into custody, or absconds, or shuts himself up in any house or building, or retires to any place, so that the warrant cannot be served upon him, the magistrate is to issue a precept to the collector requiring him to cause the nearest tuhseeldar to attach the lands that such brahmin may possess in property, or in mortgage, or in farm, or lakhiraj. The lands are to remain attached until he surrender, and the collections made during the attachment, after deducting such revenue as may fall due to government, are to be accounted for, and paid to the party against, or on account of, or in resentment to, whom the kurh was originally established, or the woman or women, or child or children, were to be wounded or slain; and after the surrender or apprehension of the brahmin or brahmins who set up the kurh, or was or were prepared to wound or slay his or their women or children, or either of them, his or their lands are to be released; but he or they are to be proceeded against, in respect to his or their trial for the original offence or offences, as prescribed in sects. 3 and 4. *Ben.* Reg. XXI. 1795, sect. 5.

Collector to apply to the magistrate in case of brahmins establishing a kurh, or being prepared to kill or wound women or children, on account of any process from the revenue department. Magistrate how to proceed.

3945. In the event of any brahmin or brahmins establishing a kurh, or preparing to wound or slay his or their women or children, or any or either of them, with a view to prevent the serving of any dustuck or writ on him or them for arrears of revenue by the local tuhseeldar, or by the collector of Benares, the collector is to represent the circumstances to the magistrate; and upon the peon deputed with the dustuck, or any other creditable person or persons, attending in court and making oath to the truth of the circumstances stated in the representation of the collector, the magistrate is to proceed as above directed,

requiring likewise, in his notice, the brahmin or brahmins either to discharge the balance of rent or revenue that has been demanded from him or them, or to appear, and, entering security for such part of it as he or they may have pleas against the payment of, to file his or their objections to the payment of such part in the civil court, that the merits of the case may be enquired into and decided according to the principles by which other disputed demands and accounts of revenue are directed to be determined. If the issuing of this notice fails to induce the brahmin or brahmins to comply with the requisitions of it, the magistrate is to proceed and the accused brahmin or brahmins are to be tried, as directed above in sects. 2, 3, and 4. *Ben.* Reg. XXI. 1795, sect. 6.

Brahmins causing the construction of a kurh, and persons firing it, are to be tried on a charge of murder for any loss of life occasioned thereby.

3946. If any brahmin or brahmins, on account of any discontent or alarm, well or ill-founded, either against government, or its officers, or servants, establish a kurh, in which any person or persons are, at any period from its construction until its removal, burnt to death or otherwise lose their lives, in consequence of such kurh being set fire to by any person whomsoever; the brahmin or brahmins who have caused the construction thereof are to be held chargeable with, and made amenable for, the crime of murder; as well as the party or parties who have been immediately employed, or aided, in setting fire to the pile or combustibles in question; and upon proof of the fact to the satisfaction of the sessions court, such brahmin or brahmins, and such person or persons, setting fire to the kurh, are to be sentenced on trial before the said court to suffer the punishment of death, in the same manner as if they had committed and been convicted of *katl-âmd*, or premeditated murder, according to the doctrines of the Mahomedan law; and, with a view to render the example as public as possible, such sentence (whether consistent with the futwa of the Mahomedan law officers, or otherwise) is in this case to be accordingly formally passed by the sessions court on the brahmin or brahmins thus convicted; but it is to be at the same time explained to the party or parties thus condemned, as it is also hereby expressly provided, that all such trials and the sentences passed, are by the sessions court to be submitted (in like manner as is prescribed in sect. 47, Reg. IX. 1793*) to the nizamut adawlut; and the party or parties condemned under this section are to remain in jail to await the final judgment of that court, who are to confirm or mitigate the sentence as appears proper. *Ben.* Reg. XXI. 1795, sect. 7.

* *v. para.* 1284.

Brahmins wounding women or children under such circumstances, how to be punished.

3947. If any brahmin or brahmins, under the circumstances and in the manner described in the preamble to and the following sections of this regulation, or under such circumstances and in such manner as is substantially similar thereto, with a sword or other offensive weapon, or otherwise, actually wounds his or their women or children, or other women or children; or any or either of them; on account or in resentment of any real or supposed injury committed towards him or them by any âmils, tuhseeldars, or other officers, or servants, employed in the revenue or judicial departments; or so wounds any of his or their own women or children, or any other woman or child, on account or in resentment of his or their differences with any individual; he or they are for such act or acts to be sentenced by the sessions court to transportation, subject to the same reference to the nizamut adawlut, and to the like mitigation as in the cases referred to in the preceding section. *Ben.* Reg. XXI. 1795, sect. 8.

Brahmins killing women or children under such circumstances how to be punished.

3948. If any brahmin or brahmins, under the circumstances and in the manner described in the preamble to and subsequent sections of this regulation, or under such circumstances and in such manner as is substantially similar thereto, with a sword or other offensive weapon, or otherwise actually puts to death his or their women or children, or other women or children, or any or either of them, on account or in resentment of any real or supposed injury, committed towards him or them by âmils, tuhseeldars, or any other officers or servants employed in the revenue or judicial departments; or so puts to death any of his or their own women and children, or any other woman or child, on account or in resentment of his or their differences with any individual; he or they are to be tried for such homicide, and on the proof of the fact or facts are to be accordingly sentenced by the sessions court to capital punishment, subject to the same reference to the nizamut adawlut, and to the like mitigation of punishment as in the cases referred to in sect. 7;

Families of such brahmins to be banished and their lands forfeited;

and the families of any brahmin or brahmins found guilty of murder under this section are, according to the order of the governor general in council under date the 17th June 1789, and the publication made in conformity to it by the resident at Benares under date the 7th July of the same year, to be banished from the province of Benares, and the Company's territories; and his and their estates in land are to be forfeited and disposed of as to government seems proper; and accordingly the sessions court is required to subjoin this order to all sentences that they pass on brahmins for murder under this section, at the same time reporting such sentence and order to the nizamut adawlut, together with as accurate an account as they may be able to procure of the number, sex, and age of the persons composing the family of such brahmin or brahmins, and annexing their opinion how far it may be advisable or otherwise rigorously to enforce the banishment of the family of such brahmin or brahmins, or to confirm, mitigate, or annul, the order for the forfeiture of their real property; and the nizamut adawlut, on consideration of this sentence and order, and of the opinion of the sessions court, are either wholly to confirm, or to mitigate the sentence and order as appears proper; and in all cases where the forfeiture of the landed property of such brahmin or brahmins, and that of his or their family, is confirmed by the nizamut adawlut, the said court is to advise the government thereof; nor is such sentence to be carried into execution as far as regards the forfeiture of the landed property without an order from the government approving such part of the sentence, and directing in what manner the lands thus forfeited are to be disposed of. *Ben.* Reg. XXI. 1795, sect. 9.

but the forfeiture of the lands is not to be carried into effect without the sanction of government;

and in no case unless the whole of the family is banished.

3949. Whenever the banishment is limited either to the party or parties committing the murder, or to a certain number only of his or their family or families, no confiscation or forfeiture of the landed property is in such instances to take place; but the same is to be entirely left in the possession, and as the property, of those members of the family who are exempted from banishment. *Ben.* Reg. XXI. 1795, sect. 10.

Brahmins convicted of murder are not exempted from death.

3950. Brahmins convicted of murder within the province of Benares are no longer exempted from a sentence of death: but the execution of a sentence of death against a brahmin is not to take place within the limits of any spot of ground held sacred by the Hindoos. The magistrates are enjoined to execute all sentences of death against brahmins at some convenient place situate without such limits. Reg. XVII. 1817, sect. 15.

Causing or procuring abortion.
How far punishable.

3951. The offence of causing or procuring abortion has not been specifically provided for by any regulation. By the Mahomedan law it does not amount to murder, though the quickened fœtus be destroyed, or the woman die from the means used to procure the abortion: and the nizamut adawlut "do not consider these offences to be of a heinous description, unless death ensue" to the woman. See C. O. No. 303 of vol. 1.(*a*) But the procuring of abortion has been distinctly recognized as a crime in the regulations, as in sect. 22, Reg. XXII. 1816; and therefore in trials held without the aid of a law officer the session judge is at liberty to pass sentence without reference. C. O. No. 1433, November 20, 1854. *W. P.*

Trial held without law officer need not be referred.

Where death to the woman is not intended, it is only culpable homicide.

3952. Where drugs were administered to a woman in order to procure abortion, under circumstances which precluded the supposition that her death was intended and she died from their effects, it was held that the crime was culpable homicide and not murder. To constitute murder under the regulations, as well as under Mahomedan law, there must be a murderous intent. Reports *W. P.* 1854, part 2, page 262.

Concealment of birth.
How far punishable.

3953. The mere concealment of the birth of a newly born illegitimate child is punishable by a magistrate. Reports *W. P.* 1853, part 2, page 1554. But where the court acquitted the prisoner on every count except that for concealing the birth, they sentenced her to imprisonment for 7 years. Reports *W. P.* 1856, part 1, page 411. Where a widow concealed the birth of an illegitimate child, which she buried privately the same day, and it was proved that the child had been born alive, although there was not sufficient evidence to bring the charge of murder home to the prisoner, yet it was held that she was punishable for the concealment of the birth; and she was sentenced to imprisonment for 18 months with fine in lieu of labor. This precedent holds good whether the trial be held under the Mahomedan law or otherwise. Reports *W. P.* 1852, page 1541. So, for two years with fine in lieu of labor. Reports *W. P.* 1855, part 2, page 831.

Illegitimacy of child primâ facie proof of the homicide.

3954. When the prisoner was secretly delivered of an illegitimate child, which she affirmed was still-born, and admitted that she had thrown away the evidence of her shame, the court remarked that while the disgraceful connection, out of which the birth arose, might naturally suggest concealment even of a still-birth, yet it may, on the other hand, afford strong primâ facie ground for inferring a wilful destruction of her living infant with the same object. Difficulties of this nature can only be solved by a reference to the medical evidence, and the appearances visible on the body. Reports *W. P.* 1855, part 2, page 337.

Attempt to commit suicide.
Within the competence of the session judge;

3955. In a case of attempting to commit suicide, which the session judge referred to the sudder court as beyond his competence, the court held that the session judge should have disposed of the case either under Reg. XII. 1829* (if he thought that law to apply to the case), or otherwise under the general powers vested in him, by Reg. LIII. 1803,† to pass sentence in cases not specifically provided for by the regulations, but punishable under

* *i. e. as for a case of wounding with attempt to murder; see para.* 3867 *et seq.*

† *v. para.* 1314.

(*a*) By the English law, under a late statute, "whosoever, with intent to procure the miscarriage of any woman, shall unlawfully administer to her, or cause to be taken by her, any poison or other noxious thing, or shall unlawfully use any instrument or other means whatsoever with the like intent, shall be guilty of felony," punishable with transportation for life, or for not less than fifteen years, or imprisonment not exceeding three years; and it is immaterial whether the woman was or was not pregnant at the time.

or magistrate.

‡ *v. para.* 705.

the Mahomedan law of tazeer. The court also observed that the magistrate might have passed sentence upon the prisoner under the provisions of sect. 19, Reg. IX. 1807,‡ if he considered the case not to call for a severer sentence than he could inflict. Reports *L. P.* 1853, part 1, page 842.

Mahomedan law.

Homicide is justifiable

3956. By the Mahomedan law homicide is considered as justifiable, or culpable. Justifiable homicide *(katl-i-mabáh)* is not distinctly treated of in the books: but is incidentally mentioned, as commanded in the advancement of religion or justice; as authorized in the defence of the person or property; and for the prevention of an atrocious crime; or as exempted from the provisions against unlawful homicide in consideration of some circumstances of necessity or justification. The following instances have been expressly noticed by the authorities:—I. In prosecution of war against hostile infidels, for the advancement of Islam, or in support of a Mussulman community.—II. Of an apostate from the faith of Islam, who, after being duly called upon, persists in his apostacy; an apostate being considered as an alien or enemy.—III. Of an insurgent against the rightful imam, when slain in the act of insurrection, or of open resistance to the established government.—IV. Of a condemned criminal, by order of the kazee or magistrate authorized to pass sentence of death. So, if the magistrate order the infliction of legal punishment not capital, and it happen to occasion death.—V. Of a murderer liable to kisas, if killed by the person legally entitled to retaliation, or by his express direction, although sentence of kisas may not have been passed by the kazee. This assumption of right, without a judicial enquiry, is however deemed culpable; and the exercise of it by any other weapon than a sword, or similar instrument, is declared subject to correction.—VI. In self-defence, or in defence of another, if life be endangered, or be thought in danger, from the assault of a person having a drawn sword, or other mortal weapon; provided self-defence be manifestly unattainable without killing the aggressor.—VII. In preservation of property from theft or robbery, provided the owner cannot recover his property but by killing the thief. A real or presumed necessity is required to render the homicide justifiable.—VIII. In prevention of adultery, rape, or other offences of a heinous nature, being chiefly such as, by the Mahomedan law, are punishable with death. It seems that if a person finds a man in the act of adultery, or in the attempt to commit it, with his own wife, or other near connection, and the latter assenting thereto, he may kill them both; or, where the female is not consenting, he may kill the violator; (*N. A. R. vol.* 1, *pages* 5, 78, 156.) the concealment of such killing would however render him liable to punishment; (*N. A. R. vol.* 1. *page* 240.) and it is sufficient presumption of adultery if he finds a man in bed with his wife; (*N. A. R. vol.* 1, *page* 151.) but the homicide is not justifiable after the completion of the adultery, unless the person slain has been found in the house of the husband, master, or relation, who kills him; (*N. A. R. vol.* 1, *pages* 39, 71, 74*n*, 78, 197.) nor is a mere suspicion of adultery a sufficient justification; (*N. A. R. vol.* 2, *page* 100.) nor, in the case of any other woman (or according to Imam Mahomed in any case) would the homicide be justifiable, unless all other means within the power of the slayer, as calling out, should have failed to prevent the commission of the offence. (*N. A. R. vol.* 1, *page* 74.)—IX. The killing

in war;

of an apostate;

of an insurgent;

of a condemned criminal;

of a murderer liable to kisas, by the person entitled thereto;

in self-defence, or defence of another;

in preservation of property from theft;

in prevention of adultery or other heinous crime;

by desire of the person killed;

another at his express desire or command. (*N. A. R. vol.* 1, *page* 1;) for a man has power to dispose of his own life, as of other personal and proprietary rights; and therefore suicide incurs no forfeiture or other penalty, under the temporal law of Islam; and so, as homicide by duelling is committed by mutual consent, the penalty of murder is not incurred. (*N. A. R. vol.* 1, *page* 277.)—X. By compulsion, under menaces which induce a fear of death: but such homicide is not strictly justifiable, the penalty of kisas being transferred to the compeller, and the compelled person liable to discretionary punishment, if the circumstances of the case appear to require it.* This principle, which regards the compelled person as the instrument rather than the author of the homicide, is applicable to every case of physical compulsion and necessity: but no illegal act can be justified by the mere command or influence, unaccompanied with force or menaces, of a parent, husband, or master, or of any person whatever. Neither is the justification of homicide in support of the law, and of legal process, in all cases expressly provided for; though it cannot be doubted that, in cases of resistance to such process, any acts unavoidably done in the execution of public duty might be justified; and that the principles of justification which have been stated in cases of a private nature, would be applicable with additional force in all matters connected with the execution or advancement of public justice. The general principle on which the above rules are founded is, that every Mahomedan may inflict tazeer upon a criminal in the act of committing a crime, but that after the completion of the offence the magistrate alone is authorized to punish the offender.

and by compulsion.

* *v. N. A. R. vol.* 1, *page* 101.

General principle.

3957. The Mahomedan law recognizes five descriptions of culpable homicide:—1 *katl-âmd*, or wilful homicide; implying a murderous will evinced by a voluntary act, and by the use of a mortal instrument, or something likely to occasion death:—2. *katl-shabah-âmd*, or wilful-like; *i. e.* resembling the former in the voluntariness of the act, but differing from it by the use of an instrument not considered to endanger life, and therefore not evincing a murderous intention:—3. *katl-khatá*, or erroneous homicide; *viz.* by an erroneous act, or by error in the intention:—4. *katl-káim-maham-i-khatá*, called also *jari-majra-i-khatá*, or involuntary homicide:—5. *katl-ba-sabab*, or accidental homicide by an intervenient cause.

Five descriptions of culpable homicide.

3958. *Katl-âmd* is defined in the Hedayah to be "homicide committed by a responsible (*i. e.* a sane and adult) person, wilfully striking another person with a mortal weapon, or something that serves for such, as a sharp piece of wood, a sharp stone, or fire." It is added in explanation, that "*âmd* means intentional; but the intention, being concealed in the mind, can be discovered only by something affording proof of it; and, as the use of a common instrument of homicide does afford such proof, when the slayer of a man uses an instrument of that description, it proves his intention to kill."

Wilful homicide *katl âmd.*

3959. *Shabah-âmd* differs from *katl-âmd* only as regards the intention to kill. Aboo Huneefah and his disciples disagree as to the definition of this offence; but the difference between them respects only the instruments to be admitted as sufficient evidence of the intent to kill; the former restricting *katl-âmd* to cases in which a mortal weapon (i. e. one appropriated or commonly used for the purpose of killing) is the instrument of death, the

Wilful-like, *katl-habah-âmd.*

latter including therein all instruments likely to kill. (*N. A. R. vol.* 1, *pages* 5, 65, 95.) Thus, the disciples hold in opposition to Aboo Huneefah that murder by strangling is liable to kisas. (*N. A. R. vol.* 1, *page* 41.) And, where the weapon was not found, the futwa declared the prisoner convicted of *shabah-âmd* only. (*N. A. R. vol.* 3, *page* 106.) According to the uniform opinion of Aboo Huneefah and his disciples, killing by poison, in whatever manner it may be given, is not deemed wilful homicide. The fine of blood is payable as for manslaughter, if the poison be compulsively put by another into the mouth of the deceased. But if the deceased took the poison into his own hands, and eat or drank it without compulsion, though he did not know it to be poison, the giver is liable to discretionary punishment only. But the discretionary punishment, it is said, should extend to death; as the offence is of that heinous nature which is declared punishable with death for the security of mankind. (*N. A. R. vol.* 1, *page* 58.)

Erroneous homicide, *katl-khatá.*

3960. The error which distinguishes *katl-khatá,* or erroneous homicide, is either in the act, or in the intention: in the former, as when an arrow is shot at a mark and hits a man, or when a blow aimed at one person undesignedly strikes another; if an arrow shot at one person pass through him, and afterwards kill another, the homicide is wilful as regards the first, and erroneous as regards the second: in the latter, as when one shoots at a man mistaking him for a deer; or when a Mussulman kills another Mussulman under a supposition of his being a hostile infidel whom it is lawful to kill.

Involuntary homicide, *katl-káim-makám-i-khatá.*

3961. *Katl-káim-makám-i-khatá* is involuntary homicide by an involuntary act; as when a sleeping person falls on another from the roof of a house, and kills him in the fall; or where a horse tramples a person to death, without the rider's designing it, or being able to prevent it.

Accidental homicide by an intervenient cause, *katl-ba-sabab.*

3962. Accidental homicide by an intervenient cause, *katl-ba-sabab,* is when a person, by doing an illegal act, produces a cause which occasions the death of another; as if a man digs a well in ground not belonging to him, and another falls into the well and is killed.

3963. Mr. Harington gives a series of cases, quoted from the Hedaya and the Futawa-i-Aalumgiri, explanatory of the differences between the several descriptions of homicide noted above; in which the distinction has been settled into precedent; but it seems that the general definitions here given will suffice for practical purposes.—The penalty for *katl-âmd* is kisas, unless the heirs or representatives of the slain forgive or compound the offence. The murderer is also excluded from inheritance to the property of the slain. The retaliation allowed for murder is stated to have two ends in view: first, satisfaction to the heirs of the slain; secondly, the determent of others, by exemplary punishment, from committing the same crime. The latter, however, though the true and only justifiable motive for capital punishment by human laws, is a secondary object of the law of kisas; which considers the private injury in cases of homicide, unaccompanied with highway robbery or other violent breach of the peace, to be of greater magnitude than the public detriment; and consequently leaves the demand of retaliation, with liberty of forgiveness or composition, to the feelings and discretion of the legal representatives of the person murdered. The punishment for *shabah-âmd, katl-khatá, and káim-makám-i-khatá,* includes

Penalty for wilful homicide.

Penalties for the

diyut, or the fine of blood, exclusion from inheritance, and expiation (*kafara*) by emancipating a Mussulman slave or fasting for two months. Diyut only is incurred for *katl-ba-sabab.* other descriptions of homicide.

3964. The first requisite for retaliation is that the blood of the deceased was under protection of the law, from permanent residence within the territory of a Mahomedan state (dar-ool-islam) in subjection to its authority; and in such case the slayer is equally liable to retaliation, whether the party slain were a Mussulman or a zimmee, the slave of another (not the slayer's) or free, a woman or a man, an infant or of mature age, sound in body and mind, or sick, dismembered, blind, lame, or insane; but a Mussulman may not be put to death for a moostamin, that is, an alien in a state of enmity. Retaliation is not incurred by a parent, or by any paternal or maternal ancestor, for the murder of a child, or lineal descendant, in consequence of a specific declaration to that effect in the koran, and in consideration of the slain having derived existence from the slayer*: and as kisas is the right of the heir, it cannot be awarded against a master for the murder of his slave, for the master would be the only person entitled to demand it; nor for the murder of his child's slave, because the claim for retaliation would accrue to the child against the father, and the enforcement of such a right is forbidden out of regard to paternity. If the slave were the joint property of the murderer and others, the other owners could not claim retaliation, for their right is not entire, and retaliation of death does not admit of being inflicted in part only. If a murder be committed by several, one of whom is legally exempt, retaliation is barred against the whole; but if none can claim exemption, then the analogy of equality, which would require that one be put to death for the murder of one, is abandoned in favor of a more approved construction of law, namely, that each individual concerned is as if he alone had committed the act; and the requisite equality being thus established, retaliation is incurred, that the lives of mankind may be in security. If two persons jointly commit homicide, one with a mortal weapon, the use of which characterizes wilful murder, and the other with a weapon not likely to inflict death, retaliation is barred against both; but the fine of blood is payable in equal shares; one-half to be paid by him who struck with the mortal weapon, because in all cases in which the fine is not the prescribed punishment, but a commutation, the fine is due from the property of the offender; and the other half by the ʕakila of him, who struck with the weapon not deadly, because specific fines for offences are due from the ʕakila.

In what cases of wilful homicide, kisas is incurred;

and in what not incurred.

* *N. A. R. vol.* 1, *pages* 24, 103, 231, 370; *vol.* 2, *page* 161.

Rule when more than one person is concerned in the murder.

By whom the fine of blood is to be paid.

3965. To warrant a sentence of kisas, the Mahomedan law requires either the confession of the accused, or the positive testimony of two competent eye-witnesses of ascertained or apparent credit. No presumptive evidence is sufficient; and kisas is barred by any doubt as to the justification or other exculpatory plea of the accused. Thus the confession must declare that the blow, wound, or other cause of death, was wilful, and inflicted by the prisoner's own hand; and the whole of what is stated in explanation must be considered as part of the confession. Where sufficient evidence is not adduced, and there appear to be grounds for conviction from the whole of the evidence on the trial and the circumstances of

Evidence required to warrant a sentence of kisas.

the case, the conviction is stated to be upon ghalib-oos-zana, akbari-rai, shubha-i-kawi or shadid, meaning strong or violent presumption. (*N. A. R. vol.* 1, *pages* 11, 26, 35, 70, 202; *vol.* 2, *page* 60.) The law officers have declared kisas barred on the ground of its not being proved which prisoner inflicted the mortal wound; but the prisoners were held liable to diyut and exemplary punishment by seasut. (*N. A. R. vol.* 3, *page* 75.)

By whom retaliation for murder is demandable.

3966. Retaliation for murder is considered to be the right of the person murdered, and to devolve to his legal heirs, who represent him in the exaction of it. This right therefore appertains to the husband, and to the wife, as well as to the heirs of blood; and the same rule is applicable to the right of diyut. If the heir of the slain be a minor, or idiot, and his or her father be living, the latter is entitled to demand or compound retaliation; but an appointed guardian, not being the father, is not so empowered, "because, the end of retaliation being relief and satisfaction to the mind, the father alone is a sufficient substitute for his children with respect to their feelings." Where some of the heirs are minors, and some adult, the lawyers differ as to the right to demand kisas before the former attain maturity, the two disciples maintaining the imperfection of the right: and so, when one or more of the heirs is an idiot, or insane, or absent. When all the heirs are minors, some lawyers consider the sovereign, or his delegate, to have the power of enforcing kisas in their behalf; while others think that it should be deferred till one or more of the minors become of age. It is however generally agreed, that if there is no heir or legal representative, the kazee, as the deputy of the sovereign, may enforce retaliation of death.

Right of such persons to compound their claim to kisas.

3967. Retaliation of death, in cases of murder, being considered the private right of the heirs, they are at liberty to remit their claim, and forgive the offender, or to compound with the consent of the murderer for such compensation as the parties agree upon. If there be several heirs, and one of them forgive the offence, or compound with the offender, the other heirs are thereby debarred from enforcing kisas, but are entitled to their proportion of the fine of blood. If a man murder two persons, and the heirs of one only forgive him, the heirs of the other are still at liberty to demand retaliation. In like manner, when two or three persons are murdered, the heirs of any of them, who may attend and demand kisas, are entitled to the enforcement of it without waiting the attendance of the heirs of all the slain; and when the offender has suffered retaliation of death for one murder, the heirs of other persons murdered by him are not entitled to claim payment of the fine of blood from his estate: nor is such fine payable, if the party, liable to kisas for murder, die before the execution of it. But if a murderer, sentenced to suffer kisas, become insane before he has been delivered over by the kazee for execution, he is not to be put to death; and his property is answerable for the fine of blood. If he become insane after he has been condemned and delivered over for execution, he may nevertheless be put to death. It is not requisite that the heir should execute the sentence with his own hand; but his presence is requisite. A sword or similar weapon is the prescribed instrument; and the established mode of execution is by decapitation.(*a*)

How far insanity bars the execution of sentence of kisas.

Execution.

(*a*) Harington's Analysis, vol. 1, page 243, *et seq.*—Hedaya, book 49, *et passim*.

Precedents.

Murder of wife or concubine.

Incited by causes connected with adultery or jealousy.

3968. Prisoner sentenced to death, on conviction of the murder of his wife under a sense of disgrace or irritation from her adulteries; *N. A. R. vol.* 1, *pages* 68 *and* 133; *vol.* 2, *pages* 160 *and* 167; *and vol.* 3, *pages* 15 *and* 71:—on conviction of the murder of his wife and two children, from suspicion of his wife's fidelity: *N. A. R. vol.* 1, *page* 108:—on conviction of the murder of his wife and mother-in-law from jealousy of the former; *N. A. R. vol.* 2, *page* 100:—on conviction of the murder of his wife or concubine from motives of jealousy; *N. A. R. vol.* 1, *pages* 21, 32, 77, 84 *and* 86. Sentenced to imprisonment for life, on conviction of the murder of his wife from feelings of jealousy; *N. A. R. vol.* 2, *page* 85; *vol.* 3, *page* 154:—on conviction of the murder of his wife, on his own confession in consequence of his having detected her in adultery; *N. A. R. vol.* 6, *page* 346:—on conviction of the murder of his wife in a fit of passion at her attempting to justify the adultery she had committed the day before; *N. A. R. vol.* 2, *page* 237;—on conviction of the murder of his wife and a procuress, and wounding a servant-maid who had aided his wife in an adulterous intercourse, and also wounding two men with whom she had committed adultery; *N. A. R. vol.* 2, *page* 397:—on conviction of the murder of his wife, under feelings of shame excited by the violation of her person; *N. A. R. vol.* 2, *page* 411:—on receiving abusive language when begging her to desist from criminal intercourse with another man; *N. A. R. vol.* 2, *page* 79. Sentenced to imprisonment for 7 years on conviction of the deliberate murder of his wife and a man with whom she had eloped, but not in the act of adultery; *N. A. R. vol.* 1, *page* 197. Husband and his nephew sentenced to transportation for life for murder of wife, when there was a strong presumption that she had been detected in adultery, although no proof of it appeared in the evidence; *N. A. R. vol.* 6, *page* 189. Sentenced to imprisonment for life, on conviction (five years after the occurrence) of the murder of his wife, the justificatory plea contained in his thana confession, that he caught her in the act of adultery, being subsequently retracted; *N. A. R. vol.* 2, *page* 472. Sentenced to death, on conviction of the murder of his wife for leaving or threatening to leave his house; *N. A. R. vol.* 1, *pages* 12 *and* 331; *vol.* 3, *page* 345:—on conviction of the murder of his concubine, for refusal to continue the adulterous intercourse; *N. A. R. vol.* 1, *pages* 64 *and* 67:—for refusal to take drugs to procure abortion; *N. A. R. vol.* 1, *page* 336. Sentenced to transportation for life, on conviction of the murder of his mistress in a fit of sudden passion on her refusing him access to her; *N. A. R. vol.* 6, *page* 56.

Incited by other causes.

3969. Prisoner sentenced to death on conviction of the murder of his wife after a quarrel, the provocation if any arising from his own conduct; *N. A. R. vol.* 1, *page* 24. Sentenced to imprisonment for life on conviction of the murder of his wife in a quarrel without premeditated intention, or without intent to kill; *N. A. R. vol.* 2, *page* 178; *vol.* 3, *page* 250; *vol.* 4, *page* 90:—and in a case of the same nature, sentenced to imprisonment for 7 years; *N. A. R. vol.* 1, *page* 112. Sentenced to death for murder of concubine or wife, on provocation of abusive language; *N. A. R. vol.* 1, *pages* 60 *and* 86; *and vol.* 5, *page* 160.

Motive unknown.

Where the motive did not appear, sentence of death was passed in *N. A. R. vol.* 1, *page* 103; *vol.* 2, *page* 102; *vol.* 3, *page* 235; *vol.* 6, *page* 110; and sentence of imprisonment for life in

Other cases.

N. A. R. vol. 2, *page* 175; *and vol.* 4, *page* 125. Prisoner convicted of the murder of a woman whom he had married during the absence of her lawful husband, on receiving a summons from the criminal court in a suit instituted against him by the husband, under Reg. VII. 1819, for her restoration, and sentenced to death; *N. A. R. vol.* 3, *page* 343. Prisoner convicted of the murder of his wife, who was insane, after she had, as alleged by him, killed his two daughters; and sentenced to imprisonment for life; *N. A. R. vol.* 4, *page* 133. When the murderous act followed close on gross abuse uttered by the deceased, in which she had been indulging for several days before, the prisoner was transported for life. Reports *W. P.* 1854, part 1, page 40.

Murder of the wife's paramour by the husband.

Without justification.

3970. Prisoner sentenced to death, on conviction of murder of the supposed paramour of his wife from revenge for the adultery; *N. A. R. vol.* 1, *pages* 15, 20 *and* 128. Sentenced to imprisonment for life in cases of the like nature; *N. A. R. vol.* 2, *page* 98; *and vol.* 4, *page* 255. Sentenced to transportation for life, on conviction of killing his wife's paramour, and wounding his wife, when he found them in adulterous intercourse in the middle of the night, although he had long known that a criminal intercourse existed between them; *N. A. R. vol.* 6, *page* 27. Sentenced to imprisonment for 7 years, on conviction of murder from resentment of deceased having attempted to violate his wife; *N. A. R. vol.* 1, *page* 61. Conviction of murder in revenge for the seduction of his wife; but, the province of Kumaon having been recently brought under the British rule, the plea of long established usage, as opposed to the laws lately introduced and imperfectly understood, was admitted in mitigation of punishment, and the sentence passed was for imprisonment for only 5 years; *N. A. R. vol.* 1, *page* 388. Sentenced to imprisonment for 2 years, on the presumption that he killed the deceased in the act of adultery with his wife; *N. A. R. vol.* 1, *page* 375. Sentenced to imprisonment for 1 year, on conviction of the murder of his servant, who had forcibly carried off his wife, and had criminal intercourse with her, and whom he suspected of stealing his cattle and setting fire to his house; *N. A. R. vol.* 1, *page* 95. Prisoner pardoned, after conviction of murder, under circumstances of extreme provocation, from the deceased (after having been forewarned of the consequences by the prisoner) being found in the prisoner's house at night attempting to violate his wife; *N. A. R. vol.* 1, *page* 71.

With a certain justification.

Murder of the husband by the wife or her paramour.

3971. Prisoner sentenced to death, on conviction of murder of the husband in prosecution of an adulterous intercourse with the wife; *N. A. R. vol.* 1, *pages* 2, 38, 72, 78 *and* 175. Where the wife was concerned in the commission of the murder, she also was sentenced capitally; *N. A. R. vol.* 1, *page* 81:—where she was convicted of privity before or after the fact, the paramour was condemned to death, and the wife to imprisonment for 7 years; *N. A. R. vol.* 1, *page* 117; *and vol.* 2, *page* 75;—and in one case for life; *N. A. R. vol.* 5, *page* 116. In a case where the wife and her paramour were convicted on violent presumption of the murder of the husband by poison, but where the actual proof that death was caused by the poison was wanting, both prisoners were sentenced to imprisonment for life, the man in the Alipore, the woman in the district jail; *N. A. R. vol.* 2, *page* 156. In a case where the paramour killed the husband, but without apparent

Presumptive proof.

Without intent to murder.

intent to murder, in the husband's house, the blows appearing to have been struck with a view to facilitate his escape on being recognized, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 1, *page* 167.

Murder from revenge caused by adultery or rivalry.

Sentence of death.

3972. Prisoner sentenced to death, on conviction of murder from rivalry in adultery; *N. A. R. vol.* 1, *pages* 9, 11, 35, 184; *and vol.* 2, *page* 342:—from revenge for obstructing the prosecution of criminal intercourse (the person killed in one case being the mother of the prisoner and the adulteress his aunt); *N. A. R. vol.* 1, *pages* 26 *and* 93:—on conviction of the murder of his sister and her paramour (the father and mother of the prisoner convicted as accessaries, but released on account of age and infirmity); *N. A. R. vol.* 4, *page* 323:—on conviction of the murder of his two cousins for adultery with his wife, a woman of acknowledged bad character, the murder being committed a fortnight after she had left his house to live with them; *N. A. R. vol.* 3, *page* 145:—on conviction of murder in revenge for adultery with his sister; *N. A. R. vol.* 1, *pages* 9 *and* 78. Prisoner sentenced to death, on conviction of the murder of a rival wife by poison; *N. A. R. vol.* 2, *page* 347. No. 1 convicted as principal, and No. 2 as accessary, in murder from revenge for criminal intercourse of the sister No. 2 (she being related to the other prisoner) with the deceased; and sentenced, No. 1 to imprisonment for life, and No. 2 for 7 years; *N. A. R. vol.* 4, *page* 130. Prisoners (a Hindoo and a Mussulman) sentenced to imprisonment for life, on conviction of the deliberate murder of a Hindoo priest in revenge for his intriguing with their wives; *N. A. R. vol.* 3, *page* 14.—No. 1 convicted as principal, and Nos. 2 and 3 as aiders and abettors, in the murder of deceased whom they caught in the act of criminal intercourse with the daughter of No. 1, and sister of the others; and sentenced No. 1 to imprisonment for 7 years, and Nos. 2 and 3 for 4 years; *N. A. R. vol.* 5, *page* 104. Prisoner sentenced to imprisonment for 3 years, on conviction of murder under great provocation, the deceased forcibly carrying off his sister from his house at night, with an apparent intention of having criminal connection with her; *N. A. R. vol.* 1, *page* 125. Prisoners convicted of murder in having killed by blows and kicks, without the use of any weapon, a person who had a few days previously seduced the wife of one of them; and sentenced, under the circumstances, to imprisonment for 7 years with labor and irons; *N. A. R. vol.* 6, *page* 325.

Rival wife.

When the act was committed under provocation, the sentence has been of imprisonment for life, or for a shorter period.

Murder from enmity or revenge.

Sentence of death passed where no circumstances extenuated the malice.

3973. Sentence of death passed, on conviction of murder, in prosecution of previous enmity; *N. A. R. vol.* 1, *pages* 6, 47, 182, 190; *vol.* 2, *pages* 5, 152, 241, 293; *and vol.* 5, *page* 9:—where the murder was committed in an open attack by a large body of men; *N. A. R. vol.* 1, *page* 323:—on conviction of murder, in revenge for various trifling causes of offence; *N. A. R. vol.* 1, *pages* 41, 43, 45, 65, 83, 88, 105, 135, 145; *vol.* 5, *page* 98; *vol.* 6, *page* 25:—in revenge for exacting usury; *N. A. R. vol.* 1, *page* 27: on a quarrel regarding money-matters; *N. A. R. vol.* 1, *page* 172; *vol.* 5, *page* 45; in the last case the prisoner's great age, 80 years, and infirmities was not considered a bar to capital punishment:—on a quarrel arising in a dispute regarding property; *N. A. R. vol.* 1, *page* 15; *vol.* 2, *page* 58; *and vol.* 3, *page* 256:—in revenge for abuse; *N. A. R. vol.* 1, *pages* 46 *and* 50:—in revenge for executing process against him; *N. A. R. vol.* 3, *page* 175:—for not attending as police officer to his complaint; *N. A. R. vol.* 1, *page* 80:—for not

consenting to prisoner's marriage with his daughter; *N. A. R. vol.* 1, *page* 92:—in revenge for the death of his father in an affray which occurred seven years previously; *N. A. R. vol.* 1, *page* 89:—on conviction of the murder of the woman in order to conceal the rape; *N. A. R. vol.* 5, *page* 94:—in order to prevent the deceased from bringing a charge of theft against him; *N. A. R. vol.* 2, *page* 149:—on conviction of the murder of his own daughter from revenge against his son-in-law; *N. A. R. vol.* 2, *page* 355:—of her son in revenge for his turning her paramour out of the house; *N. A. R. vol.* 4, *page* 154:—of the murder of one person with a view of charging the murder against another from enmity; *N. A. R. vol.* 4, *page* 235; *vol.* 5, *pages* 7, 100, *and* 142:—convicts murdering the magistrate; *N. A. R. vol.* 4, *page* 296:—and subordinate jail officer; *N. A. R. vol.* 5, *page* 37:—murder committed under the influence of a spirit of fanaticism; *N. A. R. vol.* 5, *page* 4:—massacre committed during the Cole insurrection; *N. A. R. vol.* 4, *page* 222. In a case where the prisoner was a professed *lathiwala*, the absence of any previous ill-will against the deceased was held to be an aggravation rather than a mitigation of the offence; *N. A. R. vol.* 6, *page* 53. The principal in the murder of two girls, one of 16 and the other of 7 years of age, sentenced capitally, and two accomplices sentenced to transportation for life; the most reasonable supposition being that violence had been attempted, if not completed, on the person of the elder girl, and that she was murdered in brutal rage in consequence of her offering resistance; *N. A. R. vol.* 6, *page* 212.

Case of professed lathiwala.

Where two girls were murdered for resisting attempt at rape.

Sentence of imprisonment for life;—

where the murder was unpremeditated;

presumptive proof;

prisoner a hillman;

proof on confession containing an extenuating plea;

3974. Sentence of imprisonment for life passed, on conviction of murder in sudden quarrel; *N. A. R. vol.* 2, *pages* 183, 301; *vol.* 3, *pages* 25, 199; *vol.* 4, *pages* 110, 242, *and* 325:—where the prisoner witnessed a gross insult offered to his sister by the deceased, who put his hand on her breast, and he went into his house, brought out his sword, and cut him down; *Reports W. P.* 1855, *part* 1, *page* 903:—where the husband and wife quarrelled before going to sleep, and the wife got up during the night and killed him; *N. A. R. vol.* 6, *page* 33:—where the motive was previous enmity, but the actual murder unpremeditated; *N. A. R. vol.* 3, *page* 67:—where the murder was committed under irritation at being accused of theft by the deceased; *N. A. R. vol.* 2, *page* 193:—where the enmity arose from deceased having accused the prisoners falsely of heinous crimes, and having extorted money from them to conceal his knowledge of the pretended accusations; *N. A. R. vol.* 4, *page* 76:—where the motive was revenge for abuse, but the intent to kill not clearly apparent; *N. A. R. vol.* 4, *page* 335:—where slight provocation had been received, and the proof amounted to violent presumption only; *N. A. R. vol.* 6, *page* 43:—where the prisoners were convicted on violent presumption only; *N. A. R. vol.* 5, *page* 161:—where the criminal was a hillman, acting under the impulse of violent passion, inflamed by drinking ardent spirits, and was not apprehended until 17 months after the deed; *N. A. R. vol.* 4, *page* 102:—where the prisoner and the deceased were rival doctors in the village, and the proof rested on the confession of the prisoner extenuated by the assertion that he killed the deceased under the impression that he was a thief; *N. A. R. vol.* 4, *page* 127:—where the evidence rested on the confession of the prisoner which contained an extenuating plea; *N. A. R. vol.* 3, *page* 244:—where a brother murdered his sister, not from malice, but to prevent her conversion to

Mahomedanism, and the proof rested on the confession of the prisoner; *N. A. R. vol.* 2, *page* 33:—where the prisoner killed the deceased who came to him for a debt and would not let him eat or drink, and there was no other evidence than the confession of the prisoner; *N. A. R. vol.* 2, *page* 39:—where the crime was committed in a case of assault and plunder, perpetrated 15 years previously, and two of the accomplices had been sentenced at the time for affray to one year's imprisonment without labor; *N. A. R. vol.* 3, *page* 164:—where the prisoner killed the deceased at her own request, and the proof rested chiefly on his own confession; *N. A. R. vol.* 5, *page* 118. Capital punishment has also been remitted, in consideration of the youth of the prisoner, 15 years; *N. A. R. vol.* 3, *page* 200:—in consideration of the futwa being for an entire acquittal; *N. A. R. vol.* 3, *page* 335:—when the murders were committed at the breaking out of the insurrection of the Coles, in which the people were excited by their superiors to every act of violence and bloodshed; *A. R. vol.* 4, *page* 240.

accomplices previously sentenced as for a minor offence; various cases.

3975. Two police burkundazes, convicted of torturing three persons to extort money, one of whom was so much injured that he died shortly after release, were held guilty of wilful murder, and sentenced to imprisonment one for 14 and the other for 7 years. *Reports W. P.* 1855, *part* 1, *page* 141.

Case of police officers causing death by torture.

3976. Where the motive for the murder has not been shown, the murderers have generally been sentenced to death; *N. A. R. vol.* 1, *pages* 82, 100, 115, 144, 200; *vol.* 2, *pages* 254, 288; *and vol.* 3, *page* 82:—but in two similar cases, in which the evidence amounted to violent presumption only, the sentence passed was for imprisonment for life; *N. A. R. vol.* 1, *page* 19; *and vol.* 3, *page* 108.

Motive unknown.

3977. The prisoners, a Garrow chief and his bondsman, were convicted of the murder of another of his bondsmen; but, with reference to the barbarous state of the country, the provocation given by the deceased, the authority formerly exercised by the family of the chief, the subjection to him as his bondsman of the other prisoner, and the other circumstances of the case, they were sentenced to imprisonment for two years; *N. A. R. vol.* 3, *page* 140:—in another case, where there was no evidence against the prisoner, a Garrow, except his own voluntary confession that he had put the deceased to death, because he would not pay his debt, sentence was passed of 14 years' imprisonment with labor and irons in banishment; *N. A. R. vol.* 4, *page* 270.

Cases of Garrows.

3978. Among the cases cited above, the principals and accomplices have both been sentenced to death; *N. A. R. vol.* 1, *pages* 45 *and* 190:—or the principals sentenced to death, and the accomplices to imprisonment for life; *N. A. R. vol.* 1, *pages* 27, 47, 182, 200, 323; *vol.* 2, *pages* 5, 289; *vol.* 4, *pages* 154, *and* 296:—where the prisoners were convicted of the murder of a whole family, from motives of revenge for their having purchased the estate of some of the prisoners at a public sale for government arrears, 4 were sentenced to suffer death, 14 imprisonment for life, and the others imprisonment for 14 years; *N. A. R. vol.* 2, *page* 58:—in a somewhat similar case, where an attack was made by a body of 20 or 25 armed persons, and a whole family most barbarously murdered, 2 of the most active were sentenced to death, and the others to imprisonment for 7 years

Principals and accessaries.

Cases in which the principals have been sentenced to death.

in banishment, chiefly on their own confessions; *N. A. R. vol.* 4, *page* 222:—where one prisoner enticed the deceased to the spot, where the other prisoner was lying in wait, and the man was then murdered, both prisoners were sentenced to death; *Reports W. P.* 1856, *part* 1, *page* 293:—where 3 of the prisoners, convicted as principals in the murder were sentenced capitally, a fourth for the same offence, but as having a less active share, was sentenced to imprisonment for life; a fifth for being privy to the same to imprisonment for 7 years; and a sixth for privity after the fact to 3 years' imprisonment; *N. A. R. vol.* 2, *page* 293:—where the 4 principals were sentenced, 2 to death, and 2 to imprisonment for life, an accessary after the fact was sentenced to 3 years' imprisonment; *N. A. R. vol* 3, *page* 256:—where the 2 principals were sentenced, one to death, and the other to imprisonment for life, 2 others were sentenced to imprisonment for three years for privity after the fact and concealing their knowledge thereof; *N. A. R. vol.* 4, *page* 235:—where the prisoners, four brothers, murdered a woman, whom they had forcibly carried off, and whom three of them had ravished, 2 were sentenced capitally, one to imprisonment for life, and one to imprisonment for 21 years; *N. A. R. vol.* 5, *page* 94:—where the actual murderer was sentenced to death, the person who ordered the assault was sentenced to imprisonment for life, 4 as aiding and abetting to imprisonment for 7 years, and one aiding and abetting but acting under influence to 4 years' imprisonment; *N. A. R. vol.* 6, *page* 53. Where it appeared, from the prisoner's own statement, that he was an accessary before the fact to the deliberate murder of a stranger, living in his house, for the sake of sharing in the plunder to be acquired by the murder, and that he gave the weapons, with one of which the murder was perpetrated, for the express purpose of their being used by the murderer in despatching his victim, he was sentenced capitally; *N. A. R. vol.* 6, *page* 254. Where the prisoners were convicted of being present at and aiding and abetting in the massacre of 33 persons from enmity, the principals having escaped, they were sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 173:—where there was no proof by whose hand the murder had been committed, 3 prisoners were sentenced as accomplices to imprisonment for life, one as being present and cognizant of the intent to 14 years,' and another as aiding and abetting to 7 years' imprisonment; *N. A. R. vol.* 3, *page* 282:—where one prisoner was seen beating the deceased, but there was no other evidence as to her death, and the other prisoner, the husband of the deceased, concealed her death until the discovery of the body with marks of violence thereon, the former was sentenced as aiding and abetting in the murder to imprisonment for life, and the latter for 7 years; *N. A. R. vol.* 4, *page* 5:—where the prisoners were convicted of being accomplices in the murder, the principal, a European, having been tried and acquitted in the supreme court, 3 were sentenced to imprisonment for life, 3 for 14 years, and 3 for 7 years; *N. A. R. vol.* 4, *page* 15:—where the prisoner was convicted of being an accomplice in murder, for which his associates had been tried 4 years previously and sentenced to imprisonment for life, the same sentence was passed upon him; *N. A. R. vol.* 4, *page* 328. On conviction of being an accessary after the fact in assisting to carry off the body of the person murdered and in concealing his knowledge of the fact, the prisoner was sentenced to 14 years' imprisonment in banishment; *N. A. R. vol.* 2, *page* 372:—a prisoner convicted of privity to murder and concealing his knowledge thereof was sentenced to imprisonment for

Accessary before the fact sentenced capitally.

Cases in which none of the prisoners were sentenced as principals.

Accessaries after the fact and privity.

7 years; *N. A. R. vol.* 4, *page* 54:—two prisoners, convicted of privity to murder after the fact and clandestine disposal of the body, were sentenced to 3 years' imprisonment; *N. A. R. vol.* 4, *page* 302;—two prisoners convicted of concealment of murder and throwing the body of the murdered person into the river were sentenced to 2 years' imprisonment; and two more, one as an accomplice in the concealment, and the other a chokeedar for not giving information after having seen the corpse, to imprisonment for one year; *N. A. R. vol.* 4, *page* 2.

Chokeedar guilty of privity.

3979. On conviction of the murder of a child for its ornaments, the prisoner has generally been sentenced to death; *N. A. R. vol.* 1, *pages* 16, 16, 18, 33, 43, 70, 72, 75, 76, 102, 119, 139, 152, 162, 185; *vol.* 3, *page* 311; *vol.* 4, *page* 182; *and vol.* 6, *page* 202:—so, when the evidence was only circumstantial; *N. A. R. vol.* 4, *page* 305:—so, when the prisoner was only 20 or 18 years of age; *N. A. R. vol.* 4, *page* 265; *vol.* 5, *page* 178. When the conviction was only of assault with intent to murder, the prisoner was sentenced to transportation for life; *N. A. R. vol.* 1, *pages* 48, 332, 351; *vol.* 2, *pages* 418, 479; *vol.* 3, *page* 342; *and vol.* 4, *page* 79:—where the body was not found, the sentence was for imprisonment for life; *N. A. R. vol.* 2, *page* 489:—and so, where the prisoner was convicted on violent presumption of having made away with the child, he was sentenced to imprisonment until the fate of the child should be ascertained, or it be proved that he died by means not implicating the prisoner; *N. A. R. vol.* 1, *pages* 226, 305; *vol.* 3, *page* 122; *vol.* 4, *pages* 47, 136, 327. Where the prisoner was (apparently) less than 18 years of age, he was sentenced to imprisonment for life; *N. A. R. vol.* 5, *page* 53; and so, where his age was respectively 9, 16, 14, 13; *N. A. R. vol.* 1, *page* 213; *vol.* 2, *pages* 145, 471; *and vol.* 3, *page* 179:—in two cases, where the prisoner was 13 or 14 years of age, the sentence was for transportation for life; *N. A. R. vol.* 1, *page* 215; *and vol.* 2, *page* 2:—and in one case, in accordance with the futwa, a boy aged 12 was sentenced to 30 stripes and imprisonment for 5 years; *N. A. R. vol.* 1, *page* 148:—where the proof was presumptive only a boy aged 15 was sentenced to imprisonment for 10 years; *N. A. R. vol.* 2, *page* 20. The accomplice in one case, as well as the principal, was sentenced to death; *N. A. R. vol.* 1, *page* 75:—accessary after the fact sentenced to transportation for life; *N. A. R. vol.* 6, *page* 264:—where the principal was capitally sentenced, and his accomplice was a lad of 12 or 14 years, the latter in consideration of his youth was sentenced to imprisonment for 7 years; *N. A. R. vol.* 4, *page* 305:—where the prisoner was convicted of being an accomplice but not actually concerned in the murder, for which the principal was condemned to death, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 1, *page* 33:—a boy aged 9 years convicted of aiding his mother in the murder, for which she was capitally sentenced, was discharged without punishment in consideration of his extreme youth; *N. A. R. vol.* 1, *page* 152:—three prisoners convicted of being privy to the murder and accessaries after the fact were sentenced to 39 stripes and imprisonment in banishment for 7 years; *N. A. R. vol.* 1, *page* 168:—prisoner convicted of being privy to the murder and concealing his knowledge thereof was sentenced to imprisonment for 5 years; *N. A. R. vol.* 3, *page* 73.

Murder of children for their ornaments.

Sentence of death.

Sentence of imprisonment for life, where intent to murder was not proved;

where the body was not found;

on violent presumption.

Cases of prisoners under 18 years of age.

Accessaries;

and privity.

3980. A father, convicted of killing his child from anger against another person, was sentenced to death; *N. A. R. vol.* 1, *page* 370; *vol.* 2, *page* 446:—so a mother;

Murder of children

from other motives.

Sentence of death.

Sentence of imprisonment for life.

By a mother acting on sudden impulse.

Discovery of bones not sufficient finding of body.

Body not found.

N. A. R. vol. 3, *page* 288 :—so, a mother on a quarrel with her husband; *N. A. R. vol.* 2, *pages* 27 *and* 146:—so, when the prisoner murdered a child from revenge against its mother; *N. A. R. vol.* 1, *pages* 4 *and* 313:—prisoner convicted of the murder of his infant nephew without apparent malice or motive, and sentenced to death; *N. A. R. vol.* 2, *page* 344:—prisoner convicted of the murder of two children and wounding another and two other persons, where the only assignable motive was that he had lost his situation of village chokeedar, was sentenced to death; *N. A. R. vol.* 3, *page* 268. A mother, convicted of the murder of her child, apparently under the influence of frenzy at the loss of her two other children who were accidentally drowned, was sentenced to imprisonment for life; *N. A. R. vol.* 1, *page* 382:—so, a mother convicted of throwing herself and her two children into a well, which caused the death of the youngest child, apparently under the influence of sudden anger excited by a previous altercation with her husband; *N. A. R. vol.* 2, *page* 55:—so, a mother convicted of the murder of her infant, impelled by starvation and extreme distress, which was considered a sufficient ground for mitigation of punishment; *N. A. R. vol.* 4, *page* 311. Where a mother in a sudden fit of passion threw her child into a well, by which it was drowned, she was sentenced in consideration of the sudden impulse under which she had acted and the absence of all malice towards the child, to imprisonment for 10 years; *N. A. R. vol.* 2, *page* 375. Where the prisoner was convicted on his own confession of the murder of his master's child without any discoverable motive, but the bones which he pointed out could not be identified, it was held that this was not a sufficient finding of the body, and he was sentenced to imprisonment for life in Alipore jail; *N. A. R. vol.* 2, *page* 82:—so, where the prisoner was convicted, on strong presumption, of having murdered a boy, 12 years of age, for the sake of some rupees which were on his person, and the police officers had not seen the dead body, though certain witnesses deposed to having seen it with the throat cut, capital punishment was remitted, and he was sentenced to imprisonment for life in the Alipore jail; *N. A. R. vol.* 3, *page* 8.

Murder to obtain property.

Sentence of death.

3981. Prisoner convicted on circumstantial evidence of the murder of his master, and his master's wife and mother, for their property, and sentenced to death; *N. A. R. vol.* 1, *page* 165:—so, in a similar case, when the futwa convicted of privity only; *N. A. R. vol.* 3, *page* 19:—so, the dying declaration before the neighbours of one of the two murdered individuals, the facts of his having quitted the house in which the murdered persons were by his own acknowledgement at the time of the murder, of his not returning home till the succeeding night, of his clothes being found stained with blood along with a bloody dao a short distance from the house, and of his own statement being disproved by circumstances, were held to furnish sufficient presumptive proof on which to found a capital sentence against the prisoner, as guilty of the murders charged, although he took away none of the property, the acquiring possession of which was the only apparent motive for the crime; *N. A. R. vol.* 3, *page* 131. Where the wounded person survived the infliction of the wounds for two months, but the intent to kill was clearly proved, the principal was sentenced to death, and another as accessary after the fact, and for receiving the stolen property, to imprisonment for 7 years; *N. A. R. vol.* 4, *page* 243. Where the apparent motive of the murder was to obtain property,

and the prisoner alleged that he had committed it on the promise of a reward of 40 rupees, he was capitally sentenced; *N. A. R. vol.* 1, *page* 90:—so, in other cases of murder to obtain money or goods; *N. A. R. vol.* 1, *pages* 34, 137; *vol.* 2, *pages* 104, 257;—and in prosecution of robbery or theft; *N. A. R. vol.* 1, *pages* 54, 202; *vol.* 2, *page* 103; *vol.* 4, *page* 169. Sentence of imprisonment for life was passed in two cases merely on account of a difference of opinion among the judges of the nizamut adawlut; *N. A. R. vol.* 2, *pages* 384 *and* 485: and where the proof was only presumptive; *N. A. R. vol.* 3, *pages* 11 *and* 227. Where the prisoner was one of the rude race of people in the north of Cachar, he was sentenced to transportation for life; *N. A. R. vol.* 5, *page* 8. One prisoner convicted of being an accomplice in the murder was sentenced to imprisonment for life, two others of being accessaries after the fact and receiving part of the stolen property to imprisonment for 14 years, and two of being accessaries after the fact and concealing their knowledge thereof to imprisonment for one year; *N. A. R. vol.* 5, *page* 186. Two prisoners convicted on their mofussil confessions supported by strong circumstantial evidence, were sentenced to transportation for life, notwithstanding the verdict of acquittal by the jury; *N. A. R. vol.* 6, *page* 14. On conviction of privity to murder and theft and receiving the ornaments of the deceased, the prisoner was sentenced to 7 years' imprisonment; *N. A. R. vol.* 4, *page* 275.

Sentence of imprisonment for life.

Accessaries.

Convicted in spite of acquittal by jury.

Privity.

3982. The following cases are reported in which the prisoners have been acquitted from the insufficiency or contradictory nature of the evidence; *N. A. R. vol.* 1, *pages* 2, 170; *vol.* 2, *pages* 158, 194, 318, 345; *vol.* 3, *pages* 3, 192; *vol.* 4, *pages* 60, 228, 248, 287:—so, where there was not sufficient proof to fix the act on either of the prisoners, though, from circumstances connected with the case, not a doubt existed but that one of them must have perpetrated the deed; *N. A. R. vol.* 1, *page* 267:—so, where the deceased was found hanging to a beam in her house in the middle of the day, with evident marks of having been ravished and strangled, the only evidence against the prisoner being that he was seen running from the house shortly before in a state of agitation; *N. A. R. vol.* 2, *page* 460:—so, where the evidence against the deceased consisted chiefly in his being the last person seen in company with the deceased, whom he had an obvious interest in surviving for the sake of certain property which he would succeed to; *N. A. R. vol.* 3, *page* 27:—so, when the circumstantial evidence consisted of enmity between the prisoners and deceased; threats used by the prisoners; and concealment of and denial of the possession of any weapon; *N. A. R. vol.* 2, *page* 271:—so, though marks of strangulation and other indications of violence were found on the body, the prisoner's contradictory statements, first that she had run away, and then that she had hanged herself, were not deemed sufficient evidence for conviction; *N. A. R. vol.* 2, *page* 350:—so, where the prisoner pointed out the spot where he had buried his bastard child, after having denied all knowledge of it; *N. A. R. vol.* 3, *page* 47:—so, the dying declaration of the murdered person, and the circumstances of a weapon being found near the prisoner exactly corresponding with the wound inflicted on the deceased, were held insufficient for conviction; *N. A. R. vol.* 3, *page* 66:—so, the prisoner's having been indicated by the murdered boy, together with the fact of his having been found near the spot where the boy was lying, his flight from thence on the neighbours

Acquittals on charge of murder.

Where the general nature of the evidence was insufficient, or contradictory; and what amount of circumstantial evidence has in particular cases been considered insufficient.

coming up, and his accusation when seized of another individual, were not held to constitute sufficient proof of his guilt; *N. A. R. vol.* 3, *page* 143 :—so, the circumstance of the prisoner being alone in the house with his wife when she was discovered in a dying state from wounds on her person, was held insufficient to establish the charge against him, though, from the nature and position of the wounds, it was impossible that they could have been self-inflicted; *N. A. R. vol.* 3, *page* 327 :—so, notwithstanding strong presumptive evidence, where the murdered person declared that she did not know who her murderer was; *N. A. R. vol.* 4, *page* 232. The prisoner was acquitted of the murder of a child for the sake of its ornaments, when one of the two witnesses against him was his own wife, and the evidence was otherwise unsatisfactory; *N. A. R. vol.* 3, *page* 10 :—so, where the principal witnesses against the prisoner were his wife and a lad 14 years of age, the court acquitted him, adverting to some discrepancies in the evidence of the former and to the youth of the latter; *N. A. R. vol.* 4, *page* 261. It was deemed sufficient ground for acquittal that the witnesses had been harshly treated by the police to force them to give their depositions; *N. A. R. vol.* 5, *page* 81. Two prisoners were acquitted, notwithstanding the confession of No. 2 that he was present when No. 1 committed the murder; the presumption being that the deceased was killed by the villagers, while in the act of committing theft with the prisoners; *N. A. R. vol.* 2, *page* 163.—Where the prisoner endeavoured to conceal a murder perpetrated by his wife by obstructing the police officers in their search for the body, and thus in the strict sense of the word became an accessary after the fact, but nothing else appeared against him, his act was deemed the result of natural feeling, and he was acquitted; *N. A. R. vol.* 1, *page* 137.—Where the prisoners pursued two boys who had allowed their cattle to stray on the prisoner's fields, and the boys fled towards the river in which they were found drowned the next day, it was held that no crime was established against the prisoners; *N. A. R. vol.* 3, *page* 361.

Husband accessary after the fact to murder committed by wife, not punished.

Accidental death.

Killing thieves.

3983. Where a person is killed under the supposition that he is a thief, and in the act of stealing or about to steal, the only question for consideration is whether in killing him the prisoners were guilty of any unnecessary violence or cruelty. If they were, the homicide cannot be said to be justifiable. If, on the contrary, they were only defending their property, and in so doing without premeditation or unnecessarily repeated blows the deceased was deprived of life, the act would not be criminal; *Reports IV. P.* 1852, *page* 730. In the Mahomedan law there is no allowance made for a person slaying a robber, after he has been taken into safe custody; and such homicide incurs the penalty of wilful murder. Where the prisoner was found guilty of this offence, he was sentenced to imprisonment for life; *N. A. R. vol.* 1, *page* 249 :—and where previous enmity existed, to death; *N. A. R. vol.* 5, *page* 119 :—where the prisoners appeared to have committed the crime through ignorance, they were sentenced according to their respective degrees of guilt to imprisonment for 14, 7, and 5 years; *N. A. R. vol.* 3, *page* 267 :—When the prisoners have been guilty of unnecessary violence, after the thief has been secured, the sentence of imprisonment has varied according to the circumstances of the case from two years to seven; *N. A. R. vol.* 2, *pages* 262, 461; *vol.* 4, *page* 38; *vol.* 5, *page*

General principle.

If blows were inflicted after thieves were secured;

122; *vol.* 6, *page* 160; *Reports W. P.* 1852, *pages* 512 *and* 730; *Reports L. P.* 1854, *part* 1, *page* 156. Where the prisoner struck a thief in the act of stealing with a dangerous weapon without any previous endeavour to apprehend him, he was sentenced to imprisonment for one year; *N. A. R. vol.* 2, *page* 322. In a similar case, it was held that the imprisonment endured pending trial was sufficient; *Reports W. P.* 1853, *part* 1, *page* 356. And where the prisoner found the deceased in the act of stealing, and pursued him when he ran away wounding him thirteen times as he ran until he dropped, of which wounds he died after 26 days, no punishment was inflicted because no wound was given after the thief had fallen; the court observing that a person is not criminally punishable for not having exhibited forbearance and self-command in his endeavour to secure a thief under the excitement of the moment; *Reports W. P.* 1853, *part* 1, *page* 804. But where the injuries inflicted on the thieves by their pursuers were so unnecessarily severe as to cause immediate death, the prisoners have been sentenced to imprisonment for 5 years, and an accessary after the fact for 2 years; *Reports W. P.* 1854, *part* 2, *page* 721; *and L. P.* 1855, *part* 2, *page* 982:—and in a less aggravated case, for 18 months with fine in lieu of labor; *Reports W. P.* 1852, *page* 730. Where however the prisoners, apparently chokeedars, found two persons emerging from the hole by which a house had been burglariously entered, and struck them repeated blows with a battle-axe and an iron-bound club, of which injuries they immediately died, the court passed sentence of imprisonment for 10 years; *N. A. R. vol.* 5, *page* 142. Where the homicide was committed on the thief resisting and attacking the prisoner, or where the thief was found in the actual commission of the offence and killed on the spot, the prisoner was acquitted; *N. A. R. vol.* 1, *page* 22; *vol.* 4, *page* 197; *vol.* 5, *pages* 44, 150; *vol.* 6, *page* 231; *Reports W. P.* 1852, *page* 1318. The prisoner visiting his field at night found some thieves in the act of stealing the crop: finding himself confronted by one of them armed with a weapon no less dangerous and deadly than the one which he himself carried, the prisoner thrust at him with his spear, and the wound proved fatal: held that he was justified; *Reports W. P.* 1853, *part* 1, *page* 358.

or if the violence used in effecting apprehension has been unnecessarily severe.

Homicide held justifiable.

3984. In the reported cases of the murder of persons under the idea that they practised witchcraft, the sentence has varied from imprisonment for life to imprisonment for 7 years; but the reasons which have induced this inequality of punishment are not recorded; *N. A. R. vol.* 2, *pages* 56, 188, 196; *vol.* 3, *page* 102; *vol.* 4, *pages* 128, 221, 224; *vol.* 5, *pages* 19, *and* 35; *vol.* 6, *pages* 268, *and* 327:—where the murder was committed under strong provocation, and the murdered person professed the art of witchcraft in order to extort money, the prisoner was sentenced to imprisonment for only 3 years; *N. A. R. vol.* 1, *page* 318. Two prisoners, one the husband and the other the son of the deceased, convicted, the first of murdering her, and the second of being an accomplice in the murder, from vexation at the constant imputations against her of being a witch, were sentenced, the former to transportation for life, and the latter to imprisonment for 14 years. *N. A. R. vol.* 6, *page* 244. All these cases, with the exception of the two last quoted, occurred in the least civilized parts of the country, Chota Nagpore, Kumaon, and among the Garrows.

Killing sorcerers.

Where the prisoners were actuated by superstition.

Where the deceased professed witchcraft.

Where the deceased was accused of witchcraft, and the prisoners, her husband and son, were vexed by the imputation.

Killing by poison.

Sentence of death.

3985. A prisoner convicted of murder by poison, in revenge for removal from the superintendence of a religious endowment, and to recover possession thereof, was sentenced to death; and three persons convicted of privity to the murder to imprisonment for one year; *N. A. R. vol.* 1, *page* 58. Sentence of death was passed on a prisoner convicted of the murder of a rival wife by poison; *N. A. R. vol.* 2, *page* 347: so, where the prisoner was convicted of the murder by poison of two persons, and endangering the lives of 14 others who partook of the poisoned food, with whom his master was at enmity; *N. A. R. vol.* 1, *page* 334: so, where the prisoner murdered his master by poison apparently with a view of emancipating himself from slavery, to which he had bound himself by a regular deed; *N. A. R. vol.* 2, *page* 19. Where it was clearly shown that the two prisoners administered poison with the intent to kill, but there was a doubt whether the poison actually caused the death, the sentence was for imprisonment for life; *N. A. R. vol.* 2, *page* 156:—so, where a wife mixed some kachla (nux vomica) with her husband's food with intent to kill him, but the husband disliking the taste refused to eat the dinner; *N. A. R. vol.* 4, *page* 123. Where the poisoned food was prepared, but not administered, and the prisoner declared that his object was to produce a temporary derangement of the faculties and not death, he was sentenced to imprisonment for 10 years; *N. A. R. vol.* 2, *page* 281:—where the prisoner, a girl of 12 years of age, was convicted of culpable homicide of her husband by administering poison to him but without intent to kill, she was sentenced to imprisonment for 7 years; *N. A. R. vol.* 3, *page* 236. The prisoner was acquitted, where the evidence was insufficient; *N. A. R. vol.* 2, *page* 213:—where the drug administered was not poison, and the court was not satisfied with the truth of the prisoner's confession before the magistrate, notwithstanding that the futwa convicted her of administering a drug which she conceived to be poison: *N. A. R. vol.* 1, *page* 307:—and where it seemed probable, that the deceased died from excessive drinking rather than that the wine was poisoned; *N. A. R. vol.* 2, *page* 368.

Intent to kill, but homicide not effected.

Without intent to kill.

Acquittal.

Human sacrifice.

3986. Where the prisoners were convicted of wilful murder, under strong grounds for presuming that the murder was intended as a human sacrifice, they were sentenced to death; *N. A. R. vol.* 1, *page* 13; *vol.* 4, *page* 117. Four Garrows, convicted of murdering two women for the purpose of obtaining their heads, which were required by one of their countrymen for some superstitious ceremony, were sentenced to death; *N. A. R. vol.* 5, *page* 164. Three prisoners convicted, on violent presumption, of the murder of a boy for the performance of an incantation, were sentenced to imprisonment for life; *N. A. R. vol.* 3, *page* 209. Three inhabitants of the Jyntea territory, convicted of having, at the instigation of the brother-in-law of the raja of that country, forcibly seized a boy in the British territory, for the purpose of offering him up as a sacrifice to the Hindoo idol Kalee, the boy being rescued, were sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 2, *page* 108. Of six prisoners, of a tribe of Reangs in Chittagong, convicted of the human sacrifice of three Kookies, four were sentenced to death, and two to transportation for life; *Reports L. P.* 1852, *part* 1, *page* 899. Where two persons went to a shrine dedicated to Mahadeo for the purpose of offering up their heads, and one of them cut off the head of

With the consent of the person sacrificed.

the other, and tried ineffectually to cut his own throat, he was sentenced to transportation for life; *Reports W. P.* 1854, *part* 1, *page* 762.

Female infanticide.

3987. A prisoner, convicted of destroying his infant daughter, was sentenced to death; but as it appeared that the proclamation for restraining the murder of new-born children, directed by sect. 11, Reg. III. 1804, had not been published in the pergunnah in which the prisoner resided, and as the magistrate had but recently interfered in the police of the pergunnah, so that it was not improbable that he might have been ignorant of the prohibition of the British government, the court recommended government to pardon him, which was sanctioned; *N. A. R. vol.* 1, *page* 209. A prisoner charged with the murder of his female infant was acquitted, as the only evidence against him was his confession, which he stated to be untrue and obtained by violence, and as there was no proof of the birth of the child; *N. A. R. vol.* 1, *page* 143. It was held a presumption in favor of the prisoner that the child was 10 months' old at the time of its death; *Reports W. P.* 1856, *part* 1, *page* 37.

Killing or exposure of infants.

3988. On conviction of destroying, or exposing with intent to destroy, new-born illegitimate children, the mother has been sentenced to imprisonment for life; *N A. R. vol.* 2, *pages* 161 *and* 226; *and vol.* 4, *page* 108; or to imprisonment for 7 years; *N. A. R. vol.* 1, *page* 363; *vol.* 3, *page* 83; *and vol.* 5, *page* 177;—but the reports of these cases are not sufficiently full to show the grounds of distinction in awarding punishment. Where the prisoner had made a previous attempt upon her infant's life, and it was afterwards found drowned under circumstances bearing strongly against the prisoner, but she herself reported its death to the police, and denied having caused it, and no witness saw it accomplished, she was acquitted; *N. A. R. vol.* 3, *page* 225.

Procuring abortion.

Where the means used caused the death of the woman.

3989. Two prisoners were convicted of administering drugs to a pregnant woman with a view to procure abortion in consequence of which she was delivered of a perfectly formed child born dead, and of having conveyed away the woman, so that no intelligence had been since received regarding her; and were sentenced to imprisonment for life; another prisoner convicted of aiding and abetting in the above crime was sentenced to imprisonment for 7 years; the midwife who delivered her died during the trial; *N. A. R. vol.* 3, *page* 269. Prisoners convicted of causing the death of a pregnant woman in an attempt to procure abortion, sentenced to imprisonment for 7 years; *N. A. R. vol.* 2, *page* 335. *Reports L. P.* 1852, *part* 1, *page* 910. Where the prisoner was convicted of taking a potion, when in an advanced state of pregnancy, with the intention of causing abortion, in consequence of which the premature birth of a child was occasioned, she was sentenced to imprisonment for two years: in this case the court of circuit found her guilty also of causing the death of her infant subsequently by exposure, but this was held to be a conviction of a greater offence than that charged; and that it was an essentially distinct charge, and therefore might still be proceeded on, if thought proper, notwithstanding the charge and conviction of procuring abortion; *N. A. R. vol.* 3, *page* 56. Where the prisoner was convicted of causing drugs to be administered to a pregnant woman for the purpose of procuring abortion, but there was no proof that her death was occasioned by the drugs, he was sentenced to imprisonment for

Where the woman knowingly caused abortion in herself.

Punishment for attempt.

Where the fœtus was not quick.

6 months; *N. A. R. vol.* 4, *page* 29. Where the prisoner, not quick with child, was convicted of destroying the fœtus in her womb, the court deemed the 6 months' imprisonment, which she had undergone, a sufficient punishment; *N. A. R. vol.* 2, *page* 464. In a similar case the same punishment, imprisonment for 6 months, was awarded to the woman who took, and to the paramour who administered, the drugs which caused the abortion of a fœtus yet imperfect and without life; *Reports W. P.* 1853, *part* 2, *page* 822.

Where premature labor and death of infant were caused by assault.

3990. When a woman, eight months gone with child, was assaulted and kicked, and was shortly afterwards delivered of a child which immediately died, and her own death followed in a few days occasioned by premature labor brought on by the external injuries received in the assault; the principals were sentenced to imprisonment for 5, 4, and 3 years. *Reports L. P.* 1852, *part* 1, *page* 554.

Culpable homicide.

Of wife; on account of her loss of honor, or of her adulteries;

3991. Where the prisoner put his wife to death at her own request, in consequence of her loss of honor from having been violated by several persons, it was held to be culpable homicide, and he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 1, *page* 1:—where the prisoner confessed that he found his wife in adultery, and in a rage went to a near neighbour's house for a razor, with which he cut her throat, he was sentenced to imprisonment for 7 years; *N. A. R. vol.* 2, *page* 235:—where the prisoner provoked by his wife's adultery and personal abuse killed her by striking her on the head with the handle

for running away;

of a hatchet, and afterwards in jail made a violent assault on her paramour, he was sentenced to imprisonment for life; *N. A. R. vol.* 1, *page* 5. On conviction of aggravated culpable homicide from beating his wife, 12 years of age, severely with a large piece of wood and kicking her, for running away to her father's house, of which she died the next morning, the prisoner was sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 3, *page*

for refusal of marital rights;

329:—the same sentence was passed, when the prisoner strangled his wife under the impulse

in anger;

of sudden passion from her continued refusal to have connection with him; *N. A. R. vol.* 3, *page* 275:—and so, when in sudden anger on slight provocation the prisoner gave his wife a severe blow on the head from the branch of a tree of which she died ten days after; *N. A. R. vol.* 3, *page* 360:—and so, when the prisoner killed his wife by one blow of a club which fractured her skull, from some unknown motive; *N. A. R. vol.* 4, *page* 225:—where the prisoner, in sudden anger from refusal of his wife to return home with him from her uncle's house, snatched up two bamboos and beat her severely, of which she died the following night, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 1, *page* 231. A

in attempt to consummate marriage.

prisoner convicted of culpable homicide of his wife in the attempt to consummate marriage, for which she was too young, probably from making use of some instrument, (the offence being punishable under the Mahomedan law, if death be the result of the first attempt at connection) was sentenced to 14 years' imprisonment; *N. A. R. vol.* 6, *page* 29.

In revenge for adultery with wife, or attempt to commit such.

3992. A prisoner, convicted solely on his own confession of having killed his nephew, who had committed adultery with his wife, was sentenced to 7 years' imprisonment, as though he confessed that the act was premeditated, yet the means used were only two blows with a moderately sized stick, and the meeting with the deceased was accidental; *N. A. R. vol.* 2, *page* 32:—so, where the prisoner, in sudden irritation, killed with one

blow of a moosul a person whom he believed to have carried on a criminal intercourse with his wife, and who came to his house notwithstanding the prohibition of the prisoner; *N. A. R. vol.* 3, *page* 351;—where the deceased was found in the prisoner's house at night with an adulterous intent, notwithstanding previous warning, and they beat him to death with their sticks, the intent to kill not being apparent, they were sentenced to imprisonment for 5 years; *N. A. R. vol.* 2, *page* 395;—in a similar case the prisoners were sentenced to imprisonment for 3 years, 2 years, and 1 year respectively; *N. A. R. vol.* 4, *page* 279. Where the deceased detected the prisoner in criminal intercourse with his wife, and immediately killed his wife and attacked the prisoner, who killed him in self-defence, the sentence passed was imprisonment for 2 years; *N. A. R. vol.* 1, *page* 39. Where the prisoner, a peon in the salt department, killed a person, whom he had illegally arrested, on his attempt to escape, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 3, *page* 222;—in a similar case, when the arrest was equally illegal, but the blow given to prevent escape was evidently not intended to produce death, the prisoner was sentenced to imprisonment for 2 years; *N. A. R. vol.* 1, *page* 321. Where the prisoner, a peadah of the civil court, permitted the decreeholder and others to maltreat the deceased, for whose arrest he held an order of the court, and whose death was caused by the maltreatment, he was sentenced to imprisonment for 2 years and a fine in lieu of labor; *N. A. R. vol.* 6, *page* 192. Where the prisoner killed a person, who was endeavouring to arrest him illegally, his offence was held to be culpable homicide; and, as he had displayed inexcusable ferocity in the act, he was transported for life; *Reports W. P.* 1854, *part* 1, *page* 32. Where a person illegally arrested, without judicial process, killed the person who sought to detain him, he was sentenced to imprisonment for 2 years; *N. A. R. vol.* 1, *page* 69. Where the first prisoner was convicted of killing a police officer and wounding another person, under circumstances of extreme provocation, and the other was convicted of aiding and abetting (the prisoners, their father, and brother, having been apprehended by the police officers on a false charge of highway robbery, the father killed and one of the brothers wounded by the police), the first prisoner was sentenced to imprisonment for 3, and the second for 2 years; *N. A. R. vol.* 3, *page* 54. Where the prisoner had wounded a burkundaz, who was endeavouring to arrest him immediately after he had wounded another person, and the burkundaz died after eight days from the effects of the wounds, the offence was held to be murder; but under the circumstances of the case he was transported for life; *Reports W. P.* 1854, *part* 1, *page* 290. But where a thief killed with a sword a police chokeedar who went to arrest him, he was condemned to death; *Reports W. P.* 1854, *part* 2, *page* 361. Where the prisoners went with an armed party to recover a lost or stolen bullock, and a scuffle ensued, in which one of the assailants was killed, it was held that they were responsible for the consequences which ensued from pursuing a legal object by illegal means, and were sentenced to 5, 4, and 3 years' imprisonment respectively; *Reports W. P.* 1854, *part* 2, *page* 729. A sepoy convicted of shooting a person in a disturbance in a village, in consequence of the deceased coming forward to rescue his father, whom the prisoner with other sepoys had illegally seized, was sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 413. Where

By a person illegally arresting, to prevent escape.

By a person illegally arrested.

Pursuing legal object by illegal means.

In disturbances caused by attempts to exact forced service from individuals.

one of the prisoners attempted to force the deceased to carry a bundle, and he resisted, and the villagers endeavoured to rescue him, and in the scuffle which ensued the other prisoner killed the deceased with his sword, the latter was sentenced to imprisonment for 7 years, and the former for 2 years and stripes; *N. A. R. vol.* 1, *page* 63 :—where the prisoner seized the deceased to act as a begar, and he in endeavouring to escape accidentally* fell into a well and was drowned, the prisoner was sentenced to 5 years' imprisonment; *N. A. R. vol.* 2, *page* 396 :—where a sepoy beat a man with a stick and his fists so as to cause his death for refusing to do service as a begar, he was sentenced to imprisonment for 3 years; *N. A. R. vol.* 2, *page* 469. Where a sepoy seized a villager to act as a guide, and the other villagers came to his rescue, and the sepoy fired among the crowd whereby a boy was killed, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 2, *page* 334 ;—in a similar case, the prisoner was sentenced to imprisonment for 3 years; *N. A. R. vol.* 1, *page* 209. Where it appeared from circumstantial evidence that his wife had died from the effects of violence used towards her by the prisoner, without intent to injure seriously, he was sentenced to imprisonment for 2 years; *N. A. R. vol.* 1, *page* 174. Where the prisoner killed the deceased in a dispute by firing at him a gun loaded with seed in which a single shot appeared to have been mixed, he was sentenced to imprisonment for 7 years; *N. A. R. vol.* 5, *page* 6.

* *See next para.*

Where intent to injure seriously was not shown.

Where death was caused by a fortuitous circumstance, distinct from, but the direct consequence of, the assault.

3993. Where a woman, running away from her husband who had beaten her, accidentally fell over a log of wood, and she died very shortly afterwards; and it appeared that her death was caused by the injuries received from the fall, the prisoner was punished for the assault only. As regards the question how far a man doing an illegal act is responsible for the consequences, and with reference to a case cited in England, the court observed that undoubtedly where a man dies under the best available medical treatment, which has been the direct and necessary consequence of a wound inflicted on him, the party who inflicted the wound remains answerable for the death, though arising immediately from the medical treatment. But when the cause of death is wholly from a supervenient accident, as from falling over a log of wood, or into a well, in running away from an assault, a conviction of culpable homicide cannot be sustained against the party who committed the assault. The death was the result of a fortuitous circumstance, distinct from the act for which he was responsible. *Reports L. P.* 1851, *page* 1365. *See para.* 3921.

In sudden anger, or momentary irritation :—sentence of imprisonment for life;

for 14 years;

3994. Where the prisoner in sudden anger and on provocation killed a woman with whom he had cohabited, and afterwards despoiled her of the jewels which she wore and left the body, he was sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 200 :—so, where the prisoner in sudden anger and on provocation knelt down by the side of a boy who was asleep and deliberately killed him; *N. A. R. vol.* 3, *page* 62 :—where the prisoner killed a woman by striking her on the head with an iron-bound lathi under momentary irritation, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 3, *page* 265 :—so, where the act was committed in sudden heat and passion, after what had possibly been the most serious provocation; *N. A. R. vol.* 6, *page* 196—so, where the prisoner killed the

deceased by a blow from a club on sudden irritation at being accused of cattle-stealing; *N. A. R. vol.* 3, *page* 289:—where the prisoner in sudden anger killed a man by a kick on the testicles, he was sentenced to 10 years' imprisonment; *N. A. R. vol.* 4, *page* 37. Where the prisoner killed an old man in a quarrel by striking him with his fist, he was sentenced to imprisonment for 7 years; *N. A. R. vol.* 3, *page* 304;—where the prisoner in the heat of a quarrel ran into her house, and having brought out a baitha struck an old woman with the edge of it over her nose and killed her on the spot, she was sentenced to imprisonment for 7 years; *N. A. R. vol.* 4, *page* 143;—so, where the prisoner in sudden anger ran after the deceased and struck him twice with a sword, of which wounds he died; *N. A. R. vol.* 1, *page* 115; *vol.* 4, *page* 82;—so, where the prisoner in a dispute struck the deceased with a club on the head, which caused his death sixteen days afterwards; *N. A. R. vol.* 2, *page* 187;—so, where the prisoner in a violent dispute struck the deceased three blows on the head and mouth, of which she died almost immediately; *N. A. R. vol.* 1, *page* 112;—so, where the prisoner killed the deceased in sudden irritation during sickness; *N. A. R. vol.* 3, *page* 176:—so, where the prisoner killed his own child in a fit of ungovernable passion at ill-treatment and oppression by a third party; *N. A. R. vol* 1, *page* 177.—Where the prisoner in sudden passion, but without any intention to kill her, squeezed his wife's throat so violently as to occasion her death almost immediately, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 1, *page* 110;—so, where the prisoner, who was bed-ridden, threw a stool at his wife, which struck her on the head and killed her on the spot; *N. A. R. vol.* 2, *page* 155;—so, where a zumeendar required the services of the prisoners, his tenants, and they abused him, and he held up his shoe as if to strike them, and they committed an assault upon him which occasioned his death; *N. A. R. vol.* 2, *page* 268;—so, where the prisoner killed by a blow on the head a person with whom his master was struggling; *N. A. R. vol.* 2, *page* 307. Where in a sudden quarrel and family affray the prisoner struck the deceased and he died from the injuries received, the sentence was imprisonment for 4 years; *N. A. R. vol.* 5, *page* 28. In other cases where the homicide has occurred in a sudden quarrel the prisoners have been sentenced to imprisonment for one year, or 6, or 3 months; *N. A. R. vol.* 2, *page* 106; *vol.* 1, *pages* 328 *and* 193.

for 10 years;

for 7 years;

for 5 years;

for 4 years;

for less periods.

3995. Where the deceased in a sudden quarrel struck the prisoner, and the latter seized a club and killed him by repeated blows, he was sentenced to imprisonment for life; *N. A. R. vol.* 4, *page* 150:—where a wife on a quarrel wounded her husband, and the latter seizing the knife stabbed her so that she died of the wound, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 3, *page* 207:—where the deceased allowed the cattle he was tending to stray into the prisoner's field, and the latter struck him with a club, which killed him on the spot, imprisonment for 7 years was considered a sufficient punishment; *N. A. R. vol.* 3, *page* 75;—so, where the deceased, an old woman, first struck the prisoner, and he struck her two violent blows with a heavy log of wood which killed her; *N. A. R. vol.* 3, *page* 363. In other cases where the homicide has occurred in sudden quarrel on provocation given by the deceased, the sentence has been for 5 years; *N. A. R. vol.* 1, *pages* 49 *and* 136; *vol.* 2, *page* 256; *vol.* 4, *page* 14;—for 4 years; *N. A. R. vol.* 3, *page* 291;

In a sudden quarrel in which the person killed was the aggressor.

—for 3 years; *N. A. R. vol.* 1, *page* 290;—for 2 years; *N. A. R. vol.* 2, *page* 423;—and for one year; *N A. R. vol.* 1, *page* 31; *and vol.* 3, *page* 300. Where the prisoner had received prolonged vexatious treatment and immediate provocation from the deceased, and snatched a bamboo from the hand of the deceased, and in self-defence and on the spur of the moment felled him with a blow on the temple, he was sentenced to 1 year's imprisonment with fine in lieu of labor. The court observed that the severity of the blow, the place struck, and the use of the weapon (the bamboo with both hands) alone rendered the retaliation culpable; *Reports L. P.* 1855, *part* 2, *page* 48. Where the prisoner on the provocation of abusive language assaulted the deceased with an evident intent to kill, but in sudden heat of blood, he was sentenced to imprisonment for life; and Mr. Macnaghten adds in a note; "Under the stated circumstances of this case, it is probable that the prisoner, having on provocation from words only assaulted and wounded the deceased with a manifest intent to kill him, and having thereby occasioned his death, would, if tried by an English jury, have been convicted of murder. But verbal abuse, which is often of the grossest nature amongst the natives of India, and is extremely offensive, especially to persons of the prisoner's caste, amounts to a high provocation in this country; and it is consonant to the spirit of the English law, as well as to the general principles of justice, to make a distinction of punishment between cases of deliberate murder, and sudden homicide committed in heat of blood;" *N. A. R. vol.* 1, *page* 53. So, when the prisoner killed his mother under the sudden provocation of gross verbal abuse; *Reports W. P.* 1854, *part* 1, *page* 44. Where the prisoner and deceased met in their way to the house of a woman, with whom they both had a criminal intercourse, and there ensued a quarrel which began in abuse and ended in a mutual struggle in which the deceased was strangled, the prisoner was sentenced to imprisonment for 3 years; *N. A. R. vol.* 1, *page* 123:—where in a quarrel the prisoner and deceased fell to fighting with sticks, and the latter was killed, the former was sentenced to imprisonment for 6 months; *N. A. R. vol.* 1, *page* 160:—where the prisoner, in a quarrel in which he himself was the aggressor, after mutual blows, killed the deceased with his sword, he was sentenced to imprisonment for 7 years; *N. A. R. vol.* 6, *page* 23.

On provocation of abuse.

In mutual struggle.

3996. Where there was evidence of previous enmity and intention to assault, but not of intention to kill, the sentence was for imprisonment for life; *N. A. R. vol.* 4, *page* 161; where the prisoners wilfully beat and tortured a boy till he died, and the only palliation was the absence of intent to kill, they were all sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 4, *page* 162; in a similar case, where the prisoners waylaid and assaulted the deceased, but without intent to kill, so that he died in three hours, the principal was sentenced to imprisonment for 14 years, and three others for 7 years; *N. A. R. vol.* 5, *page* 63:—so, where the prisoners assaulted and beat the deceased so as to cause his death soon after, in revenge for accusing them of dacoity, but the evidence was insufficient to prove an intent to kill, they were sentenced to imprisonment for 7 years; *N. A. R. vol.* 4, *page* 120. Where the deceased struck the prisoner with a club, and the latter went home (a short distance) for his sword, and returning met the deceased and

In prosecution of previous enmity.

killed him on the spot, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 2, *page* 107. Where the prisoner, in revenge for blows over-night, beat the deceased with his fists so as to cause his death, but without intent to kill, he was sentenced to imprisonment for 5 years; *N. A. R. vol.* 4, *page* 40:—where one prisoner struck the deceased with his hand and a stick, so as to cause death the following day, and the other instigated and commanded the assault, the former was sentenced to imprisonment for 5 years, and the latter for 3 years; *N. A. R. vol.* 4, *page* 129.

Absence of malicious motive.

3997. Where the prisoner, when called in to cure a girl of raving fits, treated her as possessed by a devil, and, besides using other means intended as remedies, beat her heavily with shoes for its supposed expulsion, so that the girl died within three days from the effects of the blows,—he was sentenced to imprisonment for one year, the absence of a malicious intent being evident. *N. A. R. vol.* 6, *page* 137.

Assisting in suicide.

To relieve persons suffering from leprosy.

3998. A Mahomedan was convicted of burying his mother-in-law, who was leprous, at her own request, without ascertaining that she was dead; and was cautioned and released in consideration of his having been 6 months in confinement: a proclamation was at the same time issued warning the Mahomedans that they would be subject to punishment if guilty of such offence; *N. A. R. vol.* 1, *page* 218. A Hindoo at the request of his father, who was afflicted with leprosy, filled a pit with fuel to which he set fire, and the father threw himself into it and was killed; but the prisoner was released without punishment, as he appeared to be justified under the tenets of the Hindoo law: *N. A. R. vol.* 1, *page* 220. For the same reason a Hindoo who assisted his father, suffering from leprosy, to drown himself was released; *N. A. R. vol.* 1, *page* 292. A woman and her husband were both afflicted with leprosy; the latter died, and the former throwing herself into his grave was buried with him by the prisoners at her own desire; they were sentenced to 6 months' imprisonment; *N. A. R. vol.* 2, *page* 18. Two prisoners convicted of assisting in the suicide of their uncle, a leper, were released in consideration of the confinement which they had already undergone; *N. A. R. vol.* 3, *page* 127. In later cases the sentence has been for one year's imprisonment with fine in lieu of labor; *Reports W. P.* 1855, *part* 2, *page* 62. Two prisoners charged with aiding and abetting a third person (who died while under trial) in burying alive his brother, a leper, at his own request, were acquitted and discharged as it was not proved that they were aware of his intention; *N. A. R. vol.* 3, *page* 139.

In revenge for injuries sustained from another person.

Six prisoners were convicted of assisting in burning to death a woman, apparently with her own consent, for the purpose of intimidating and preventing persons deputed to execute a decree of court from performing that duty: one, her husband, was sentenced to imprisonment for life, and the others for 7 years; *N. A. R. vol.* 2, *page* 310.

In order to avoid disgrace.

Where a person, in order to avoid disgrace, besought his two nephews to kill him, threatening that he would kill them if they refused, and one of them at last consented, and with the sword which he received from his uncle killed him by two blows on the back of the neck, the two nephews were sentenced to imprisonment in banishment for 14 years, and the other persons present to imprisonment for 7 and 5 years: the number of persons present, and

the fact that the wounds were inflicted with the victim's own weapon, proved that there was no real compulsion ; *Reports W. P.* 1854, *part* 2, *page* 573.

Erroneous homicide.

Sentence of death ; of imprisonment for 14 years ; on provocation, for 2 years ; where the act was unlikely to cause death, for 6 months.

3999. The prisoner desiring to kill the wife of a person, with whom she had an illicit connection, gave her two poisoned loaves; but a third person eating thereof died in consequence, and the prisoner was sentenced to death; *N. A. R. vol.* 1, *page* 287. A prisoner convicted of the murder of a man in the intent to kill a woman, with whom he had maintained a criminal intercourse, but who had deserted him for the deceased, was sentenced to death; *N. A. R. vol.* 1, *page* 309. Where the prisoner in a sudden fit of anger aimed a blow at one person, which fell upon a child, concealed at the time from the view of the prisoner, and instantly caused its death, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 5, *page* 96. In a similar case the principle was held that as the assault was unjustifiable, the prisoners must be held responsible for the full effect of the blow without reference to the physical strength of the person on whom it fell: but as the prisoners had evidently no intention to kill, they were sentenced to imprisonment for one year with labor commutable to fine ; *Reports L. P.* 1855, *part* 2, *page* 593. Where the prisoner found his wife in bed with another man, and killed her on the spot, and while endeavouring to strike the paramour killed his mother and brother who interposed, he was sentenced to imprisonment for 2 years; the killing the wife was justifiable under the Mahomedan law from the presumption of adultery arising from situation; and the killing the others was considered erroneous homicide; *N. A. R. vol.* 1, *page* 151. Where the prisoner threw a piece of burnt brick at the prosecutor, and it struck the deceased on the breast and occasioned her immediate death, it appeared that he had no intention to kill, and that the act was not likely to cause death, and he was sentenced to imprisonment for 6 months; *N. A. R. vol.* 1, *page* 52.

Accidental homicide.

4000. Where the prisoner killed the deceased at night mistaking him for a dog or jackal, and after endeavouring in vain to resuscitate him concealed the body, he was released in consideration of the period during which he had already suffered imprisonment; *N. A. R. vol.* 2, *page* 67. Where the prisoner accidentally shot the deceased while firing at a wild hog, he was acquitted and released; *N. A. R. vol.* 4, *page* 1.

Homicide by compulsion.

4001. Where the prisoner killed the deceased by order of his master, and under fear of immediate death in case of refusal, the futwa acquitted him, and he was released. *N. A. R. vol.* 1, *page* 101. See last case cited in para. 3998.

Justifiable homicide.

From adultery of wife ;

4002. It has been held justifiable homicide, where a woman in defence of her honor killed a man who was entering her house at night with the intent to have forcible connection with her; *N. A. R. vol.* 3, *page* 233 :—where the prisoner finding a man in the act of adultery with his wife killed either one or both ; *N. A. R. vol.* 1, *page* 130 ; *vol.* 2, *pages* 171, 408, 456 ; *vol.* 3, *page* 169 ; *vol.* 4, *page* 168 ; *vol.* 5, *page* 158 ; *and vol.* 6, *page* 329 ;—where the prisoner, detecting his wife in the act of adultery at a short distance from his own house, went back to his house for a sword, with which he returned, and finding the

parties still in the position in which he left them, wounded the adulterer and a woman who acted as procuress, and killed his wife; *N. A. R. vol. 5, page* 90:—so, where the prisoner found the deceased in a situation which warranted the presumption that he was attempting to commit adultery with his wife; *N. A. R. vol.* 1, *page* 156:—so, where the prisoner killed a person whom he detected in the act of adultery with his wife, though he was aware of his wife's elopement and of her living in a state of adultery with the deceased, but had done every thing in his power to dissuade her from a continuance of the criminal intercourse; *N. A. R. vol.* 1, *page* 298:—but in a later case of the same nature it has been held that the prisoner was not justified, the apparent difference being that he had in a certain degree connived at the intercourse by permitting the deceased to live under the same roof with his wife, and he was sentenced to transportation for life; *N. A. R. vol.* 6, *page* 27:—so, a prisoner was held not justified, who lay in wait and killed the deceased while sleeping with his wife, after she had with his knowledge been living with the deceased for thirteen years; and he was sentenced to death; *N. A. R. vol.* 1, *page* 389;—so, the finding a man at night prosecuting an adulterous intercourse with his wife, was not held sufficient to justify the prisoner in homicide with deliberate cruelty and torture, however it might excuse acts committed in the irritation and excitement of the moment; and he was sentenced to imprisonment for life; *N. A. R. vol.* 4, *page* 292:—so, where the prisoner, aware of his wife's intrigue, watched her, and having armed himself for the express purpose of killing one or both followed her, and, finding her in the act of adultery, wounded both her and her paramour, and after they had separated pursued and again wounded both of them successively, while endeavouring to escape, it was held that these circumstances of aggravation diminished the justification, and he was sentenced to imprisonment for 2 years and a fine of 100 rupees in lieu of labor; *N. A. R. vol.* 5, *page* 65:—and so, where the prisoner killed the deceased under strong grounds of provocation for the violation of his wife, though he did not find him in the act, the court held that he was not completely justified, but that the imprisonment already undergone was fully adequate to his offence; *N. A. R. vol.* 5, *page* 71. Two prisoners were held to be justified in killing the deceased under sudden irritation at finding him in bed with their sister; *N. A. R. vol.* 1, *page* 74:—so, when the prisoner killed his sister and her paramour in the act of adultery; *N. A. R. vol.* 2, *page* 48:—but both of these trials were held before the enactment of sect. 5, Reg. IV. 1822.* A prisoner was held justified who, under the influence of gross provocation, in consequence of dishonor done to his family by the forcible violation of his sister by the deceased, wounded him with a sword, which caused his death a fortnight after; *N. A. R. vol.* 5, *page* 99:—but where a brother, finding a man in the house of his sister under very strong circumstances of suspicion that he had criminal intercourse with her, kept guard at the door, while a distant relation who was with him entered the house wherein the deceased had secreted himself and deliberately cut his throat, it was held that the admission of justification was barred by the deliberate manner of the murder, and by the neglect of their power to seize him; and the relation was sentenced to imprisonment for life, and the brother for 7 years; *N. A. R. vol.* 4, *page* 130:—and where the prisoner finding his brother's wife in the act of adultery, during the absence of his brother, seized a sword and killed her, it was held that he was not justified,

and in what cases of that nature not justified.

From adultery or violation of sister;

* *v. para.* 3931.

and in what cases of that nature not justified.

but capital punishment was remitted, and he was sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 419:—where the prisoner, finding the deceased in the attempt to violate his sister-in-law by force, beat him so severely with his club that he died after three days, he was sentenced to imprisonment for one year; *N. A. R. vol.* 2, *page* 491. A prisoner, convicted of killing the deceased while attempting to ravish his master's wife, was released without punishment, as were also two persons who concealed the body; *N. A. R. vol.* 1, *page* 240. Where the prisoners killed a burkundaz, after he and another burkundaz had in cold blood put to death a villager whom they had arrested and while they were under no reasonable apprehension of a rescue, the homicide was deemed justifiable; *N. A. R. vol.* 2, *page* 327. In a case of assault and wounding, referred to the nizamut adawlut by the judge of circuit on a doubt as to whether certain of the prisoners, who were sepoys, were not justified, as they acted under the orders of a jemadar, their superior officer; the case was returned for sentence, and the judge informed that, though the fact noticed might operate in mitigation of punishment, it could not justify gross infraction of the peace; *N. A. R. vol.* 3, *page* 128. Where the prisoner killed the deceased in self-defence, in an attack on him by the deceased occasioned by jealousy, the homicide was considered justifiable; *N. A. R. vol.* 4, *page* 132. For cases in which the homicide of persons found in the act of committing theft has been held justifiable, *see para.* 3983.

In the rescue of his master's wife from an attempt to ravish her.

In retaliation of a murder.

Sepoys acting under order of jemadar not justified.

In self-defence.

Of thieves.

NOTE.

The English law presumes every homicide to be murder, until the contrary appears. Therefore the prosecutor is not bound to prove malice, or any facts or circumstances beside the homicide from which it may be presumed; but in such a case it is only presumed, and the defendant may rebut that presumption by proving that the homicide was *justifiable* or *excusable*, or that at most it amounted to *manslaughter* only, and not to *murder*.

Justifiable homicide is of three kinds:—1. Where the proper officer executes a criminal in strict conformity with the term of his sentence. 2. Where an officer of justice, or other person acting in his aid, in the legal exercise of a particular duty, kills a person who resists or prevents him from executing it; but in this case the homicide is not justifiable without an apparent absolute necessity. 3. Where the homicide is committed in prevention of a forcible and atrocious crime; as, for instance, if a man attempt to rob or murder another, and be killed in the attempt, the slayer shall be acquitted and discharged. So a woman is justified in killing one who attempts to ravish her; and so too the husband or father may justify killing a man who attempts a rape upon his wife or daughter; but not if he take them in adultery by consent, for the one is forcible and felonious, but not the other.

Excusable homicide is of two kinds:—1. Where a man doing a lawful act, without any intention of hurt, by accident kills another; as, for instance, where a man is working with a hatchet, and the head by accident flies off and kills a person standing by. This is called homicide *per infortunium*, or by misadventure. 2. Where a man kills another upon a sudden rencounter, merely in his own defence, or in defence of his wife, child, parent, or servant, and not from any vindictive feeling; which is termed homicide *se defendendo*.

Manslaughter is the unlawful and felonious killing of another, without any malice either expressed or implied. It is of two kinds:—1. Involuntary manslaughter, where a man doing an unlawful act, not amounting to felony, by accident kills another. 2. Voluntary manslaughter, where, upon a sudden quarrel,

two persons fight, and one of them kills the other; or where a man greatly provokes another by some personal violence, &c., and the other immediately kills him.

Murder is thus defined by Lord Coke: "when a person of sound memory and discretion unlawfully killeth any reasonable creature in being, and under the king's peace, with malice aforethought either express or implied." 1. It must be committed by a person of sound memory and discretion; it cannot be committed by an idiot, lunatic, or infant, unless indeed he shew a consciousness of doing wrong, and of course a discretion or discernment between good and evil. But if any person procure an idot, &c., to murder another, the procurer is guilty of the murder, although, perhaps, not present at the time it was committed.—2. It must be an unlawful killing, not excusable or justifiable. It may be by poisoning, striking, starving, drowning, and a thousand other forms of death by which human nature may be overcome. Taking away a man's life by perjury is not, it seems, in law murder; although, *in foro conscientiæ*, it is as much so as killing with a sword. If a man however do any other act, of which the probable consequence may be, and eventually is, death, such killing may be murder, although no stroke were struck by himself; as was the case of the unnatural son who exposed his sick father to the air against his will, by reason whereof he died; of the harlot, who laid her child in an orchard, where a kite struck it and killed it; and of the mother, who hid her child in a pig-stye, where it was devoured. So, if one, under a well-grounded apprehension of personal violence, do an act which causes his death (as, for instance, jumps out of a window, or into a river), he who threatened is answerable for the consequences. If a man have a beast that is used to do mischief, and he knowing it suffer it to go abroad, and it kill a man, this, it seems, is manslaughter in the owner; but, if he had purposely turned it loose, though merely to frighten people, and to make what is called sport, it is as much murder as if he had incited a bear or a dog to worry them. If a man have a disease, which in all likelihood would terminate his life in a short time, and another give him a wound or hurt, which hastens his death, this is such a killing as constitutes a murder. So, if a man be wounded, and the wound turn to a gangrene or fever for want of proper applications, or from neglect, and the man die of the gangrene or fever; or if it become fatal from the refusal of the party to submit to a surgical operation; this is also such a killing as would constitute murder; but otherwise, if the death of the party were caused by improper applications to the wound, and not by the wound itself. And it is a general rule, that, to make the killing murder, the death must follow within a year and a day after the stroke or other cause of it.—3. The person killed must be "a reasonable creature in being, and under the king's peace." Therefore to kill a child in its mother's womb is no murder; but if the child be born alive, and die by reason of the potion or bruises it received in the womb, it may be murder in the person who administered or gave them. So, if a mortal wound be given to a child whilst in the act of being born, for instance upon the head as soon as the head appears, and before the child has breathed, it may be murder, if the child is afterward born alive and dies thereof. But it must be proved that the entire child has actually been born into the world in a living state; and the fact of its having breathed is not a conclusive proof thereof. But the fact of the child's being still connected with the mother by the umbilical cord will not prevent the killing from being murder.—As to the words "the king's peace" they mean merely that it is not murder to kill an alien enemy in time of war; but killing even an alien enemy within the kingdom, unless in the actual exercise of war, would be murder.—4. And lastly, the killing must be committed with malice aforethought. Malice is either express or implied. Express malice is when one, with a sedate and deliberate mind, and formed design, doth kill another; which formed design is evidenced by external circumstances discovering that inward intention; as, lying in wait, antecedent menaces, former grudges, and concerted schemes to do him some bodily harm. Neither shall he be guilty of a less crime, who kills another in consequence of such a wilful act as shews him to be an enemy to mankind in general: as, going deliberately with a horse used to strike, or discharging a gun, among a multitude of people. So if a man resolve to kill the next person he meets, and do kill him, it is murder, although he knew him not; for it is universal malice. And it may be necessary here to observe, that no provocation, however great, will extenuate or justify a homicide, where there is evidence of express malice. So, where A and B having

fallen out, A said he would not strike, but would give B a pot of ale to strike him; upon which B did strike, and A thereupon killed him; this was holden to be murder. And in many cases where no malice is expressed or openly indicated, the law will imply it. Thus, where a man wilfully poisons another; in such a deliberate act the law presumes malice, though no particular enmity can be proved. So, if a man kill another suddenly without any, or without a considerable, provocation; if he kill an officer of justice in the legal execution of his duty; or if, intending to do another felony, he undesignedly kill a man: in all these cases the law implies malice, and the offence is murder.—If two persons mutually agree to commit suicide together, and accordingly take poison or attempt to drown themselves together, but one only of them dies, the survivor is guilty of murder.—As there are many very nice distinctions, however, upon this subject of malice prepense, express, and implied, it may be desirable to consider the subject more fully and minutely, which we shall do under the following heads:—

Killing by poison. Of all the forms of death, by which human nature may be overcome, the most detestable is that of poison; because it can of all others be the least prevented either by manhood or forethought. And therefore in all cases where a man wilfully administers poison to another; or lays poison for him, and either he or another takes it, and is killed by it; the law implies malice, although no particular enmity can be proved. If however, it were administered by mistake, or if it were laid with an innocent intention in the place from which the deceased took it, it is merely homicide by misadventure. So, if a physician or surgeon give his patient a potion or plaster to cure him, which contrary to expectation kills him, this also is neither murder nor manslaughter, but misadventure.

Killing by fighting. Killing by fighting may be either murder, or manslaughter, or homicide *se defendendo*, according to circumstances. 1. If two persons quarrel and afterwards fight, and one of them kill the other,—in such a case, if there intervened, between the quarrel and the fight, a sufficient cooling time for passion to subside and reason to interpose, the killing would be murder; but if such a time had not intervened, if the parties, in their passion, fought immediately, or even if immediately upon the quarrel they went out and fought in a field (for this is deemed a continued act of passion), the killing in such a case would be manslaughter only, whether the party killing struck the first blow or not. Therefore if two persons deliberately fight a duel, and one of them be killed, the other and his second are guilty of murder; no matter how grievous the provocation, or by which party it was given. The second of the deceased, also, is deemed guilty of murder, as being present, aiding, and abetting; although Lord Hale seems to think the rule of law, as to principals in the second degree, too far strained in that case.—And even in the case of a sudden quarrel, where the parties immediately fight, the case may be attended with such circumstances as will indicate malice upon the part of the party killing; and the killing then would be murder, and not merely manslaughter. If, for instance, the party killing began the attack under circumstances of undue advantage,—as if A and B quarrel, and A draw his sword and make a pass at B, and B thereupon draw his sword, and they fight, and B is killed, A would be guilty of murder; for his making the pass before B had drawn his sword, shews that he sought his blood. So, where A and B quarrelled, and A threw a bottle at B, and then drew his sword, and B then threw the bottle back at A, and wounded him, upon which A immediately stabbed him: this was holden to be murder. But if the parties, at the commencement, attack each other upon equal terms, and afterwards, in the course of the fight, one of them in his passion snatch up a deadly weapon, and kill the other with it; this would be manslaughter only.—So, if there be any other circumstances in the case indicative of malice in the party killing, it will be murder. As, for instance, if two persons fight upon a sudden quarrel, and be separated; and one of them afterwards, having provided himself with a deadly weapon, lies in wait for the other, to have an opportunity, thus armed, to renew the quarrel; and they accordingly meet, quarrel, and fight, and the man who is armed kills the other; this is murder. So, if two persons fight from malice, and pretend or feign a reconciliation, and they afterwards meet and suddenly fight upon the score of the old malice, and one of them be killed; this is murder, and not merely

manslaughter. So, if B challenge A, and A refuse to meet him, but tell him that he shall be on his way to such a place upon business at such a time, and B meet him on his way and assault him, and they fight, and A kills B: if it appear that A made this communication for the purpose of evading the law, by giving the fight the appearance of a sudden quarrel, the killing would be murder; but, if the communication were made undesignedly, it would be manslaughter only.—2. Boxing and sword-playing are unlawful acts; therefore, if a player be killed, such killing is manslaughter. But all struggles in anger whether by fighting, wrestling, or in any other mode, are unlawful, and death occasioned by them is manslaughter at the least.—3. If two men fight upon a sudden quarrel, and one of them after a while endeavour to avoid any further struggle, and retreat as far as he can, until at length no means of escaping his assailant remain to him, and he then turn round and kill his assailant, in order to avoid destruction: this homicide is excusable as being committed in self-defence; and, malice apart, it is little matter, in such a case, which struck the first blow at the beginning of the contest. And the same, of course, where one man attacks another, and the latter, without fighting, flies, and then turns round and kills his assailant, as above mentioned. But in either of these cases, to show that it was homicide *se defendendo*, it must appear that the party killing had retreated, either as far as he could, by reason of some wall, ditch, or other impediment, or as far as the fierceness of the assault would permit him; for the assault may have been so fierce as not to allow him to yield a step, without manifest danger of his life, or enormous bodily harm; and then, in his defence, if there be no other way of saving his own life, he may kill his assailant instantly. The distinction between this kind of homicide and manslaughter, is, that here the slayer could not otherwise escape, although he would; in manslaughter he would not escape if he could.—And as the manner of the defence, so is also the time, to be considered; for if the person assaulted do not fall upon the aggressor until the affray is over, or when he is running away, that is revenge, and not defence. Neither, under the cover of self-defence, will the law permit a man to screen himself from the guilt of deliberate murder: for if A and B agree to fight a duel, and A give the first onset, and B retreat as far as he safely can, and then kill A, this is murder, because of the previous malice and concerted design.—Under this excuse of self-defence, the principal civil and natural relations are comprehended; therefore, master and servant, parent and child, husband and wife, killing an assailant in the necessary defence of each other respectively, are excused; the act of the relation assisting being construed the same as the act of the party himself.—There is one species of homicide *se defendendo*, where the party slain is equally innocent as he who occasions his death: as, for instance, that case mentioned by Lord Bacon, where two persons, being shipwrecked, have got on the same plank, but, finding it not able to save them both, one of them thrusts the other from it, and he is drowned: this homicide is excusable through unavoidable necessity, and upon the principle of self-defence.—4. If, when two persons are fighting, a third come up, and take the part of one of them, and kill the other: this will be manslaughter in the third party; and murder or manslaughter in the person whom he assisted, according as the fight was deliberate and premeditated, or upon a sudden quarrel. If the fighting, however, were deliberate, or otherwise of malice, and the third party, when he interfered, knew it to be so, the killing would be murder, both in the party who thus interfered, and in the person whom he assisted. If, on the other hand, the third party, who thus interferes, be killed, it is but manslaughter.

Killing upon provocation. No provocation whatever can render a homicide justifiable, or even excusable; the least it can amount to is manslaughter. If a man kill another suddenly, without any, or without a considerable, provocation, the law implies malice, and the homicide is murder; but if the provocation were great, and such as must have greatly provoked him, the killing is manslaughter only. In considering, however, whether the killing upon provocation amount to murder or manslaughter, the instrument wherewith the homicide was effected must also be taken into consideration: for if it were effected with a deadly weapon, the provocation must be great indeed to extenuate the offence to manslaughter: if with a weapon or other means not likely or intended to produce death, a less degree of provocation will be sufficient; in fact, the mode of resentment must bear a reasonable proportion to the provocation, to reduce the offence to manslaughter. Where some provoking words being used by a soldier to a woman, she gave him a box

on the ear; and the soldier immediately gave her a blow with the pomel of his sword on the breast, and then ran after her, and stabbed her in the back; this was at first deemed murder; but it appearing afterwards that the blow given to the soldier was with an iron patten, and that it drew a great deal of blood, the offence was holden to be manslaughter only. Where two soldiers demanded to be admitted to a public-house to drink, and the landlord refused, because it was after eleven o'clock at night; one of them, however, upon the door being afterwards opened to let out company, rushed in; and whilst the landlord was struggling to get him out, the other soldier struck the landlord on the head with a sharp instrument, and killed him; this was holden to be murder, notwithstanding the struggle with the other soldier; besides the landlord had a right to put him out of his house. So, in all other cases, where upon a sudden provocation one beats another in a cruel and unusual manner, so that he dies, it is murder. An unwarrantable imprisonment of a man's person, however, has been holden sufficient provocation to make a killing, even with a sword, manslaughter only. Where A to prevent B from fighting with his brother, laid hold of him and held him down, but struck no blow, upon which B stabbed A; it was holden that if A did nothing more than was necessary to prevent B from beating his brother, and had died of the stab, the offence of B would have been murder; but that if A did more than was necessary to prevent the beating of his brother, it would have been manslaughter only. So, if a man pull another's nose, or offer him any other great personal indignity, and the other thereupon immediately kill him, it is manslaughter only. Or if a man take another in adultery with his wife, and kill him directly upon the spot, this is manslaughter merely. So, if a father see another person in the act of committing an unnatural crime with his son, and instantly kill him, it is manslaughter only; but if, hearing of it, he go in quest of the party, and kill him, it is murder. Where a boy, after fighting with another, ran home bleeding to his father; and the father immediately took a small cudgel, and ran three-quarters of a mile to the place where the other boy was, and struck him a single blow with the stick, of which blow the boy afterwards died: this was holden to be manslaughter only. Where a mob threw a pickpocket into a pond, for the purpose of ducking him, but he was unfortunately drowned: this was holden to be manslaughter. But it may safely be laid down as a general rule, that no words or gestures, however opprobrious or provoking, will be considered in law to be provocation sufficient to reduce homicide to manslaughter, if the killing be effected with a deadly weapon, or an intention to do the deceased some grievous bodily harm be otherwise manifested; but if effected with a blow of a fist, or with a stick, or other weapon not likely to kill, it is manslaughter only. And if there be a provocation by blows, which are not sufficiently violent in themselves to reduce the killing below the crime of murder, yet if they be accompanied by very aggravated words and gestures, this may make it manslaughter only.—But in all cases, to reduce a homicide upon provocation to manslaughter, it is essential that the battery or wounding, &c., appear to have been inflicted immediately upon the provocation being given; for if there be a sufficient cooling time for passion to subside and reason to interpose, and the person so provoked afterwards kills the other, this is deliberate revenge, and not heat of blood, and accordingly amounts to murder. So, if there be evidence of express malice, the killing will be murder, however great the provocation.

Killing by correction. Where a parent is moderately correcting his child, a master his servant or scholar, or an officer punishing a criminal, and he happens to occasion his death, it is only misadventure; but if he exceed the bounds of moderation, either in the manner, the instrument, or the quantity of punishment, and death ensue, it is manslaughter at the least, and in some cases (according to the circumstances) murder. Where a master corrected his servant with an iron bar, and a schoolmaster stamped on his scholar's belly, so that each of the sufferers died: these were justly holden to be murders; because the correction being excessive, and such as could not proceed but from a bad heart, it was equivalent to a deliberate act of killing. So, in all other cases where the correction is inflicted with a deadly weapon, and the party dies of it, it will be murder; if with an instrument not likely to kill, though improper for the purpose of correction, it will be manslaughter. Where a master struck his servant with one of his clogs, because he had not cleaned them, and death unfortunately ensued; it was holden to be manslaughter only,

because the clog was very unlikely to cause death, and the master consequently could not have the intention of taking away the servant's life by hitting him with it.

Killing in defence of property, &c. If any person attempt to rob or murder another in or near the highway, or in a dwelling house, or attempt burglariously to break into any dwelling house in the night time, and be killed in the attempt, the slayer shall be acquitted and discharged; for the homicide is justifiable and the killing is without felony. And the same, where a man is killed in attempting to burn a house; or where a woman kills a man who attempts to ravish her; or where a man is killed in attempting to break open a house in the day-time with intent to rob, or to commit any other forcible and atrocious crime. And not only the party whose person or property is thus attacked, but his servants, and other members of his family, and even strangers who are present at the time, are equally justified in killing the assailant. The above rule, however, does not extend to felonies without force, such as picking pockets, nor to misdemeanors of any kind; and even in cases within the rule, it must be proved that the intent to commit such forcible and atrocious crime was clearly manifested by the felon, otherwise the homicide will be manslaughter at least, if not murder. But, in cases within the rule, it may be necessary to observe, that the party whose person or property is attacked, is not obliged to retreat, as in other cases of self-defence, but may even pursue the assailant until he find himself or his property out of danger.—What we have now said, relates to felonies by force. In the case of forcible misdemeanors, such as trespass in taking goods, although the owner may justify beating the trespasser, in order to make him desist, yet if he kill him it will be manslaughter: or if, instead of beating him, he attack him with a deadly weapon, it would perhaps be murder, particularly if the wound were given after the party had desisted from the trespass. But, in defence of a man's house, the owner or his family may kill a trespasser who would forcibly dispossess him of it, in the same manner as he might by law kill in self-defence a man who attacked him personally; with this distinction, however, that in defending his house he need not retreat, as in other cases of *se defendendo*, for that would be giving up his house to his adversary. As to personal assaults, where the party assaulted kills his adversary, we have already considered them under the foregoing heads.

Killing without intention whilst doing another act. If a person, whilst doing or attempting to do another act, undesignedly kill a man,—if the act intended or attempted were a felony, the killing is murder; if unlawful (*malum in se*) but not amounting to felony, the killing is manslaughter: if lawful (that is, not being *malum in se*) homicide by misadventure merely. If a man deliberately shoot at A, and miss him, but kill B, this is murder. So, if he strike at A, and by accident strike and kill B, it is murder. If a man lay poison for A, and B (against whom he had no malicious intent) take it, and it kill him, this is likewise murder. So, if whilst two men are deliberately fighting, a third go between them to part them, and be killed by one of them: it is murder, whether he were killed accidentally or designedly. If a man shoot at another's poultry, with intent to steal them, and by accident kill a man, it is murder; if without such intention, it is manslaughter; the act of shooting at the poultry being unlawful, but not felonious. If a man throw a stone at a horse, and it hit the rider and kill him, it is manslaughter. If, when engaged in an unlawful or dangerous sport, a man kill another by accident, it is manslaughter; if the sport were lawful and not dangerous, it would be homicide by misadventure merely. So, if a man, intending to kill a person attempting to commit a forcible and atrocious crime against his person or property, by mistake kill one of his own family, it is homicide by misadventure merely. Where a man is at work with a hatchet, and the head of it flies off and kills a bystander, this is homicide by misadventure. So, if a man, shooting at game, by accident kill another, it is homicide by misadventure merely, even although the party be unqualified; for the use of fire-arms by an unqualified person is merely a prohibited act, and not *malum in se*.—There are two seeming exceptions, however, to the above rule. *First.* If two persons be fighting under such circumstances that if one were killed it would be manslaughter only in the other—if, in such a case, an innocent party be unintentionally killed by one of them, it is manslaughter only. This, perhaps, is not strictly an exception; for the act in which the parties are engaged, namely, the fighting, is not in itself

felonious, although the result of it may be so. *Secondly.* Where an act, in itself lawful, is at the same time dangerous;—in order to render an unintentional homicide from it excusable, it must appear that the party, whilst doing the act, used such a degree of caution as to make it improbable that any danger or injury should arise from it to others: if not, the homicide will be manslaughter at the least. For instance, if a workman throw stones or rubbish, &c., from a house, and thereby kill a person passing underneath, it is murder, manslaughter, or homicide by misadventure, according to the degree of precaution taken by him that no person should be injured by them, and of the necessity of such precaution. If he did it without previously warning the persons beneath, and at a time when it was likely that persons were passing, it would be murder; if at a time when it was not likely that any persons were passing, it would be manslaughter; if in a retired place, where no persons were in the habit of passing, or likely to pass, it would be misadventure merely. But if he previously gave warning to the persons beneath,—then, if it happened in a country village where few persons pass, it is misadventure only; if in London or other populous town at a time when the streets are full, it would be manslaughter.—If a man, breaking an unruly or vicious horse, ride him amongst a crowd, and the horse kick a man and kill him: this is murder, if the rider brought the horse into the crowd with an intent to do mischief, or even to divert himself by frightening the crowd; manslaughter, if done heedlessly and incautiously only.—If a man, driving a cart or other carriage, drive it over another man and kill him—if he saw or had timely notice of the probable mischief, and yet drove on, it would be murder; if he purposely drove it furiously in amongst a crowd, it would probably be murder; *semb.* if in a street where persons were much in the habit of passing, it would be manslaughter; if in a place where people did not usually pass, misadventure merely, provided he took that care which persons in similar situations are accustomed to do. If the driver of a carriage race with another carriage, and urge his horses to so rapid a pace that he cannot control them, it is manslaughter in both drivers if in consequence the carriage upset and a passenger be killed.—Where a man lays poison to kill rats, and another man takes it, and it kills him; if the poison were laid in such a manner or place as to be mistaken for food, it is, perhaps, manslaughter; if otherwise, misadventure only.—If a man discharge a loaded gun amongst a multitude of people, and death ensue, it is murder; for the law in such a case will imply malice. If he discharge it, merely for the purpose of unloading it, or the like, and death ensue—then, if it were in a place where persons were likely to pass, it is manslaughter; otherwise, misadventure only. Where a man gave a loaded gun to his servant to protect a corn-field from deer during the night, with instructions to fire when he heard any bustle in the corn by the deer; and the master himself unfortunately rushed into the corn during the night, and the servant, imagining it to be the deer, fired, and shot his master: this was holden to be misadventure. Where a man, finding a pistol in the street, brought it home, and imagining (from having tried it with the rammer) that it was not loaded, presented it in sport at his wife, drew the trigger, and killed her: this was holden to be manslaughter; but Mr. Justice Foster doubts the propriety of the decision, as the defendant took the usual precaution to ascertain that the pistol was not loaded; and clearly, if he took not this or other reasonable precaution, it would be manslaughter. If a man, shooting at butts or a target, by accident kill a bystander, it is misadventure; but this must be understood of cases where a proper precaution to prevent accidents has been taken; for if the target, &c. be placed near a highway or path, where persons are in the habit of passing, the killing would probably be deemed manslaughter.—So, if a man, knowing that people are passing along a street, wantonly throw a stone or shoot an arrow into it, likely to do an injury, with an intent to hurt some of the persons passing, and a person be killed by it, it is murder, although the stone or arrow was not intended to hit any particular person; but if it were done thoughtlessly and incautiously, and without intent to hurt any one,—then, if it were thrown or shot into a place where people were in the habit of passing, the killing is manslaughter; if into a place where persons were not likely to pass, misadventure only.

Killing officers of justice. If a man kill an officer of justice, either civil or criminal, such as a bailiff, constable, watchman, &c., in the legal execution of his duty, or any person acting in aid of him (whether specially called thereunto or not) or any private person endeavouring to suppress an affray, or apprehend

a felon, knowing his authority, or the intention with which he interposes; the law will imply malice, and the offender will be guilty of murder. And the officer and persons acting in aid of him enjoy this privilege and protection, *eundo, morando, et redeundo*: therefore, if an officer, on his way to do his duty, be opposed and killed, it is murder; or if he arrive at the place, and in consequence of opposition retreat, and on his retreat be killed, it is murder. Three things are to be attended to, in matters of this kind: the legality of the deceased's authority, the legality of the manner in which he executed it, and the defendant's knowledge of that authority; for if an officer be killed in attempting to execute a writ or warrant invalid on the face of it, or against a wrong person, or out of the district in which alone it could legally be executed; or if a private person interfere and act in a case where he has no authority by law to do so; or if the defendant had no knowledge of the officer's business, or of the intention with which a private person interferes, and the officer or private person be resisted and killed: the killing will be manslaughter only.—1. As to the legality of the authority; if an officer, having a warrant from a proper magistrate to apprehend B for felony; or if B be indicted for felony; or if the hue and cry be levied against B; in these cases, if B or any of his accomplices kill the officer or any person joining in the hue and cry, it is murder, whether B be guilty or innocent of the felony charged against him. But if the warrant were illegal and void upon the face of it; or issued with a blank in it, and the blank afterwards filled up; or attempted to be executed against C instead of B; the killing would be manslaughter only. If a writ of execution in civil cases be correct upon the face of it, although the judgment be erroneous, or the proceedings irregular—if the officer, in endeavouring to execute it, be resisted and killed, it is murder; but if the writ were a nullity on the face of it, or if the warrant upon it were attempted to be executed by any other than the officer to whom it was directed (the officer himself not being present, or, at least, acting in the arrest) the killing would be manslaughter only. If an innocent person be indicted for a felony, and an attempt be made to arrest him for it without warrant, and he resist and kill the party attempting to arrest him—if the party attempting the arrest were a constable, the killing is murder; if a private person, manslaughter; because the constable has authority by law to arrest in such a case; a private person has not. And the same in all cases where a person is arrested or attempted to be arrested upon a reasonable suspicion of felony. But if a man actually commit a felony, and another, in whose presence he committed it, attempt to arrest him for it, and be resisted and killed; or if a person, present at an affray, interfere for the purpose of restraining the offenders and keeping the peace, and be killed; or if a person, present when another attempts to commit a treason or felony, lay hold of him in order to prevent him, and be killed: the killing in these cases would be murder, whether the person arresting or interfering, &c., be a constable or not; for either has power to arrest or interfere, &c., in such a case.—2. As to the legality of the manner in which the authority is exercised: if the constable of the vill of A attempt without warrant to suppress a tumult in the vill of B, and be resisted and killed, it is manslaughter only; for he had authority, in such a case, within the vill of A alone. So, if a sheriff's officer attempt to execute a writ out of the proper county, and be resisted and killed, it is manslaughter only. But constables and other peace officers may execute warrants out of their respective precincts, provided the place where the warrant is executed be within the jurisdiction of the magistrate granting or backing the warrant.—3. As to the defendant's knowledge of the deceased's authority or intention,—when any officer is in the legal execution of his duty, or a private person endeavouring to suppress an affray, or apprehend a felon, and is resisted and killed—if it appear that the slayer knew the officer's business or the intent of the private person, either expressly from the deceased, or impliedly from circumstances, the killing is murder; if it appear that he was ignorant in this respect, it is manslaughter only. Where a bailiff rushed into a gentleman's bed-chamber early in the morning, without giving the slightest intimation of his business, and the gentleman, not knowing him, in the impulse of the moment wounded him with his sword, and killed him: this was holden to be manslaughter. But where the bailiff or constable shews the warrant; or where it appears that he is known to the defendant to be an officer; as, for instance, when the defendant said, "Stand off, I know you well enough, come at your peril;" if after this the officer be killed, it will be murder. If the constable interfere to prevent an affray within his own vill, if

he be killed by one of the inhabitants, or other person, who knows him to be the constable, it will be murder; if by a stranger who does not know him, it is manslaughter. So, if one of several know him to be a constable, it will be murder in him, manslaughter in the rest. If a constable command the peace, or shew his staff of office, this it seems is a sufficient intimation of his authority. And in such a case it is not necessary to prove the deceased's appointment as constable; proof that he was accustomed to act as constable is sufficient. But private persons, when they interfere, must expressly intimate their intention, otherwise killing them will be manslaughter only. In all the cases, however, above stated to be manslaughter only, if there be evidence of express malice in the party killing, the homicide will be murder.

Killing by officers. Where an officer of justice, in endeavouring to execute his duty, kills a man, this is justifiable homicide, or manslaughter, or murder, according to circumstances. 1. Where an officer of justice is resisted in the legal execution of his duty, he may repel force by force; and if in doing so he kill the party resisting him, it is justifiable homicide: and this in civil as well as in criminal cases. And the same as to persons acting in aid of such officer. Thus, if a peace officer have a legal warrant against B for felony, or if B stand indicted for felony, or if hue and cry be levied against B—in these cases if B resist, and in the struggle be killed by the officer, or any person acting in aid of him, or joining in the hue and cry, the killing is justifiable. So, if a private person attempt to arrest one who commits a felony in his presence, or interfere to suppress an affray, and be resisted, and kill the person resisting, this is also justifiable homicide. And this, not merely on the principle of self-defence, for the officer or private person is not bound to retreat, as in the case of homicide *se defendendo*, but upon that principle, and the necessity of executing the duty the law has imposed upon him, jointly. Still there must be an apparent necessity for the killing; for if the officer were to kill after the resistance had ceased, or if there were no reasonable necessity for the violence used upon the part of the officer, &c., the killing would be manslaughter at the least. Also, in order to justify an officer or private person in these cases, it is necessary that they should, at the time, be in the act of legally executing a duty imposed upon them by law, and under such circumstances, that, if the officer or private person were killed, it would have been murder; for if the circumstances of the case were such, that it would have been manslaughter only to kill the officer or private person, it will be manslaughter at least in the officer or private person to kill the party resisting.—2. If the prisoners in a jail, or going to jail, assault the jailor, or officer, and he in his defence kill any of them, it is justifiable, for the sake of preventing an escape.—3. Where an officer or private person, having legal authority to apprehend a man, attempts to do so, and the man, instead of resisting, flies, or resists and then flies, and is killed by the officer or private person in the pursuit—if the offence with which the man was charged were a treason or felony, or a dangerous wound given, and he could not otherwise be apprehended, the homicide is justifiable: but if charged with a breach of the peace, or other misdemeanor merely; or if the arrest were intended in a civil suit; the killing in such cases would be murder,—unless, indeed, the homicide were occasioned by means not likely or intended to kill, such as tripping up his heels, giving him a blow of an ordinary cudgel or other weapon not likely to kill, or the like; in which case the homicide at most would be manslaughter only.—4. In a case of a riot or rebellious assembly, the officers endeavouring to disperse the mob are justifiable in killing them, if the riot cannot otherwise be suppressed.—5. Where a criminal is executed by the proper officer, in pursuance of his sentence, this is justifiable homicide. But if it be done by any other person, or not done in strict conformity with the sentence, as, for instance, if an officer behead one who is adjudged to be hanged, or the contrary, it is murder. *Archbold.*

SECTION V.

OF THUGGEE.

Language to be used in the proceedings of thuggee cases.

4003. All proceedings connected with cases of thuggee are to be written in Oordoo Hindoostance; but the depositions and confessions of thugs should be taken down in the language best understood by them, and the general superintendent of operations for the suppression of thuggee should be furnished with translations of any documents written in the Bengalee or other language, which he may require. C. O. No. 241 of vol. 2, and *L. P.* No. 16 of vol. 3.

Meaning of the expressions—thug,

4004. The word "thug" when used in any Act heretofore passed by the council of India, is to be taken to have meant and to mean a person, who is, or has at any time been, habitually associated with any other or others for the purpose of committing, by means intended by such person or known by such person to be likely to cause the death of any person, the offence of child-stealing, or the offence of robbery not amounting to dacoity. And the word "thuggee" when used in such Acts is to be taken to have meant and to mean the offence of committing or attempting any such child-stealing or robbery by a thug. And the expression "murder by thuggee," when used in such Acts, is to be taken to have meant and to mean murder when employed as the means of committing such child-stealing or such robbery by a thug. Act III. 1848.

thuggee,

and murder by thuggee.

Punishment for belonging to a gang of thugs.

4005. Whoever is proved to have belonged, either before or after the passing of this Act, to any gang of thugs, either within or without the territories of the East India Company, is to be punished with imprisonment for life with hard labor.*(a)* Act XXX. 1836, sect. 1.

Sentence of imprisonment for life to include transportation for life.

4006. Within the territories subject to the government of the East India Company, whenever any court not included under the provisions of Act XIV. 1844* sentences any offender to imprisonment for life under the above provisions, it is at the same time to sentence such offender to transportation beyond sea for life, unless there should be special reasons inducing the court to think such prisoner not a proper subject for transportation, which special reasons the court is required to record. Act X. 1847.

* *See para.* 1490.

Persons charged with murder by thuggee, or belonging to a gang of thugs, may be committed by any magistrate;

4007. Any person charged with murder by thuggee, or with the offence of having belonged to a gang of thugs, made punishable by Act XXX. 1836, may be committed by any magistrate or joint magistrate within the territories of the East India Company, for trial before any criminal court competent to try such person on such charge. Act XVIII. 1837.

but not for an attempt at thuggee.

4008. This does not authorize a magistrate to commit for an *attempt* at thuggee, when such offence has not been perpetrated in his jurisdiction. Reports *L. P.* 1851, page 82.

(a) Before the passing of this Act, the nizamut adawlut held that the charge of being a thug was not a specific charge on which the prisoner could be punished. N. A. R. vol. 1, page 289.

Persons charged with belonging to a gang of thugs may be tried by any sessions court;

4009. Every person accused of the offence made punishable by this Act, may be tried by any court which would have been competent to try him, if his offence had been committed within the zillah where that court sits, any thing to the contrary in any regulation contained notwithstanding. Act XXX. 1836, sect. 2.

but not for specific acts of thuggee committed without the Company's territories.

4010. The above provision does not authorize the session judge, without first having obtained the authority of government, to try prisoners charged with specific acts of murder by thuggee and plunder of property, when such acts have been committed beyond the territories of the East India Company. Const. No. 1213.

Persons accused of murder by thuggee, or receiving property stolen by thuggee, may be tried by any sessions court.

4011. Any person accused of the offence of murder by thuggee, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by thuggee, may be tried by any court which would have been competent to try him if his offence had been committed within the zillah where that court sits, anything contained in any regulation or regulations to the contrary notwithstanding. Act XVIII. 1839.

The appointment of a special judge does not bar the jurisdiction of ordinary courts.

4012. Under the above provisions the appointment of a special session judge, for the trial of cases of thuggee, does not bar the jurisdiction of the ordinary sessions courts in cases of that nature. At the same time, the session judges are required to abstain from trying any commitments made by the assistants to the general superintendent for the suppression of thuggee, when a session judge has been specially appointed for that purpose. N. A. R. vol. 5, page 89. C. O. No. 11 of vol. 3. *L. P.*

Acquittal of general charge does not bar trial for specific crime.

4013. A previous acquittal of the prisoner on a charge of being a thug by profession, and of having associated with and belonged to a gang of thugs, is no bar to his trial for specific acts of thuggee, although they were committed before the first trial. Reports *L. P.* 1856, part 1, page 915.

Futwa not to be taken on charge of belonging to a gang of thugs.

4014. No court is, on a trial of any person accused of the offence made punishable by this Act *(para.* 4005*)*, to require any futwa from any law officer. Act XXX. 1836, sect. 3.

But futwa must be taken on charge of specific acts of murder and thuggee.

4015. But the above provisions do not authorize a session judge to dispense with futwa on the trial of a prisoner charged with specific acts of murder and thuggee; unless the prisoner be tried under the provisions of Reg. VI. 1832, *i. e.* with the aid of a panchâyat, assessors, or a jury. Const. No. 1074.

Rules under which a promise of a qualified pardon may be made to thugs on condition of becoming approvers; but such pardon is only to exempt from capital punishment and from transportation.

4016. A magistrate (or joint-magistrate, or deputy superintendent for the suppression of thuggee vested with the powers of a joint-magistrate) is authorized to offer mercy, in the name of the government, to any thug from whom he has reason to expect that useful information may be procured, on condition that he makes a full and ingenuous confession. But the promise which he is authorized to make is not a promise of entire pardon, for government will not consent to let any such offenders loose on society, however long the period of their confinement may have been, however unexceptionable their demeanour during that confinement may have been, or whatever may have been the value of the information given by them. The magistrate is in no case therefore, without the special permission of government, to hold out to any thug any hope that he will ever be set at liberty. The mercy which a magistrate is authorized to promise extends only to exemption

from capital punishment and transportation, and to such indulgences in confinement as may be compatible with the safe keeping of the prisoner. Every promise of this sort which a magistrate gives, the government holds itself bound to perform, even though it should appear that in giving such a promise he has not exercised a sound discretion. Such promises may be made either to persons who have been convicted, or to persons who have not yet been tried: and in the former case the punishment will, on the report of the magistrate that the convict has made a confession which he considers as full and ingenuous, be commuted by government according to the engagements which he may have made: but, as nothing short of a sentence pronounced by a court of justice and recorded on the proceedings of that court can be sufficient ground for detaining any person in perpetual imprisonment, every promise of mercy made to a thug, who has not already been convicted, must be followed up by his regular trial and conviction. The magistrate is, in the first instance, to place on record a faithful narrative of the prisoner's life of crime, noting every thuggee in which he has been employed, the names of the thugs who have been engaged in each expedition, their respective crimes and occupations in each journey, and generally to enter into as full a detail as possible, informing the person who offers himself as an approver, that for any wilful omission on his part he will forfeit the qualified pardon held out to him: after this unreserved confession the magistrate is to examine a few thug approvers as to his being a real thug, and is then to commit him for trial before the session judge on the charge of having been guilty of the offence made punishable by Act XXX. 1836, explaining to him that if he pleads guilty to that minor offence, he will not be put on his trial for any capital crime which he may have committed as a thug. His conviction will under such circumstances be a matter of course; it will give scarcely any trouble to the court by which he may be tried; it will under Act XIX. 1837* leave him a competent witness; and he will be detained for life in confinement under an authority which can never be questioned, and in a strictly regular manner. C. O. No. 247 of vol. 2. *L. P.*

And every approver must be committed for trial and convicted of having belonged to a gang of thugs, in order to ensure the legality of his detention and imprisonment for life.

* *v. paras.* 544 *and* 550.

4017. There are no particular rules for the trial of thug prisoners under the provisions of Act XXX. 1836; but the session judge is to be careful to affix to the record of each trial the tender of exemption from the punishment of death and transportation beyond seas, which the magistrate will have made to the prisoner, and the prisoner's acceptance thereof. C. O. No. 246 of vol. 2. *L. P.*

The offer and acceptance of pardon by the approver must be affixed to the record of each trial.

4018. Magistrates are to require their police officers always to exert themselves most particularly, on the receipt of descriptive rolls of thugs from the officers of the thuggee department, for the purpose of their apprehension, &c.; and any neglect or inattention to the requisitions of those officers on the part of a police officer will be considered as a very serious offence, rendering him liable to removal from office. C. O. Sup. Pol. *L. P.* No. 15 of 1840.

Police officers to give every assistance to the officers of the thuggee department.

4019. Three prisoners convicted of murder by thuggee were sentenced to suffer death; four others, convicted of assisting in the murder by holding the feet of the murdered persons, to imprisonment in transportation for life; and the remaining prisoners, as associates and accomplices, to imprisonment for life in banishment. N. A. R. vol. 3, page 1.

Precedent of trial.

SECTION VI.

OF SUTTEE.

Suttees are illegal.

4020. The practice of suttee, or of burning or burying alive the widows of Hindoos, is declared illegal, and punishable by the criminal courts. Reg. XVII. 1829, sect. 2.

All landholders are declared responsible for immediate information of intended suttees.

4021. All zumeendars, talookdars, or other proprietors of land, whether malguzaree or lakhiraj; all sudder farmers and under-renters of land of every description; all dependent talookdars; all naibs and other local agents; all native officers employed in the collection of the revenue and rents of lands on the part of government, or the court of wards; and all munduls or other head men of villages; are especially accountable for the immediate communication to the officers of the nearest police station of any intended sacrifice of the nature described in the foregoing section; and any zumeendar, or other description of persons above noticed, to whom such responsibility is declared to attach, who is convicted of wilfully neglecting or delaying to furnish the information above required, is liable to be fined by the magistrate or joint-magistrate in any sum not exceeding 200 rupees, and in default of payment to be confined for any period of imprisonment not exceeding 6 months. Reg. XVII. 1829, sect. 3, cl. 1.

Penalty in cases of neglect.

Police to report cases of such neglect

4022. Police officers are to report to the magistrate any omission, or unnecessary delay, on the part of the persons above noticed, in furnishing the promptest information regarding any such intended sacrifice. C. O. No. 43 of vol. 2.

Police darogah how to act on recieving intelligence of intended suttee.

4023. Immediately on receiving intelligence that the sacrifice, declared illegal by this regulation, is likely to occur, the police darogah is either to repair in person to the spot, or to depute his mohurir or jemadar, accompanied by one or more burkundazes of the Hindoo religion; and it is the duty of the police officers to announce to the persons assembled for the performance of the ceremony that it is illegal, and to endeavour to prevail on them to disperse; explaining to them that, in the event of their persisting in it, they will involve themselves in a crime, and become subject to punishment by the criminal courts. Should the parties assembled proceed, in defiance of these remonstrances, to carry the ceremony into effect, it is the duty of the police officers to use all lawful means in their power to prevent the sacrifice from taking place, and to apprehend the principal persons aiding and abetting in the performance of it; and in the event of the police officers being unable to apprehend them, they are to endeavour to ascertain their names and places of abode, and are immediately to communicate the whole of the particulars to the magistrate for his orders. Reg. XVII. 1829, sect. 3, cl. 2.

Darogah to report if he does not proceed himself; or to explain cause of delay if the police do not arrive in time.

4024. When the darogah deputes his mohurir or jemadar to proceed to the spot, he is immediately to report to the magistrate the cause which has prevented his going in person; and in any instance in which the sacrifice has commenced, or has been completed, prior to the arrival of the police, a minute report of the circumstances which have operated to prevent their early arrival must be submitted to the magistrate. In giving effect to the above

provisions, the police officers are directed to employ every means of dissuasion and remonstrance, to endeavour to associate with themselves any respectable Hindoos in persuading the parties concerned to desist from the sacrifice, and to use all patience and forbearance in the exercise of the duty prescribed. C. O. No. 43 of vol 2.

And police officers to associate respectable Hindoos with themselves.

4025. Should intelligence of a sacrifice declared illegal by this regulation not reach the police officers until after it has actually taken place, or should the sacrifice have been carried into effect before their arrival at the spot, they are nevertheless to institute a full enquiry into the circumstances of the case in like manner as on all other occasions of unnatural death, and to report them for the information and orders of the magistrate to whom they are subordinate. Reg. XVII. 1829, sect. 3, cl. 3.

Police officers how to act when they do not hear of a suttee until after it has taken place.

4026. Police officers arriving at the spot after the completion of the suttee, are not authorized to take parties into custody before instituting enquiries to ascertain who have aided in the performance of the sacrifice; they should merely make the enquiry and report the result to the magistrate, as directed above. Const. No. 598.

In such case they cannot apprehend the persons implicated.

4027. Police officers are to use all care and discretion in giving effect to these orders; and are in each case to be held bound to show that every means of mildness was resorted to, before recourse was had to any exercise of authority. They are in no case to use any duress towards any persons apprehended under these rules; but are to treat them with every indulgence, and in sending them to the magistrate are to allow them every facility not inconsistent with their safe custody.(*a*) But these instructions are not to be understood as prohibiting the use of force in the event of an attempt to persist in performing the ceremony after due warning. C. O. No. 43 of vol. 2. Const. No. 749.

Force is not to be employed by police officers to prevent a suttee until mildness has proved ineffectual.

Prisoners how to be treated.

4028. On the receipt of the reports required to be made by the police darogahs, under the foregoing provisions, the magistrate of the jurisdiction, in which the sacrifice has taken place, is to enquire into the circumstances of the case, and is to adopt the necessary measures for bringing the parties concerned in promoting it to trial before the sessions court. Reg. XVII. 1829, sect. 4, cl. 1.

Magistrate how to proceed on receiving report.

4029. All persons convicted of aiding and abetting in the sacrifice of a Hindoo widow by burning or burying her alive, whether the sacrifice be voluntary on her part or not, are to be deemed guilty of culpable homicide, and are liable to punishment by fine, or by imprisonment, or by both fine and imprisonment, at the discretion of the sessions court, according to the nature and circumstances of the case and the degree of guilt established against the offender; nor is it to be held to be any plea of justification, that he or she was desired by the party sacrificed to assist in putting her to death. Reg. XVII. 1829, sect. 4, cl. 2.

Persons convicted of aiding and abetting in suttee, liable to what punishment.

4030. As the crime of aiding and abetting in a suttee is expressly declared by the above provision to be culpable homicide, conviction of which latter offence includes liability

Labor may be adjudged.

(*a*) The rules of this circular were drawn up at the desire of the governor general in order to allay, as much as possible, the popular agitation, which the suppression of suttees was expected to arouse, when it was felt that "great allowance should be made for the feelings and prejudices of the people." It would seem therefore unnecessary now to act upon these rules very strictly, as there appears no reason why suttee should not be treated at present as any other case of culpable homicide.

to labor, the same penalty is awardable in the former case also. [This supersedes Const. No. 1125.] C. O. No. 70 of vol. 3.

The prisoners may be admitted to bail.

4031. Persons committed to take their trial before the sessions court, for the offence above mentioned, are to be admitted to bail or not at the discretion of the magistrate, subject to the general rules in force in regard to the admission of bail. Reg. XVII. 1829, sect. 4, cl. 3.

Prisoners not admitted to bail, how to be treated.

4032. With the exception of aggravated cases, in which recourse has been had to stupefaction or violence, the magistrate is enjoined to abstain from using irons, handcuffs, or other unnecessary duress towards any persons apprehended under these rules; and, in any case deemed not bailable, the prisoners are invariably to be confined in the civil jail, and never in the criminal jail.*(a)* C. O. No. 43 of vol. 2.

The nizamut adawlut may pass sentence of death in certain cases.

4033. Nothing contained in this regulation is to be construed to preclude the nizamut adawlut from passing sentence of death on persons convicted of using violence or compulsion, or of having assisted in burning or burying alive a Hindoo widow, while laboring under a state of intoxication or stupefaction, or other cause impeding the exercise of her free-will, when, from the aggravated nature of the offence proved against the prisoner, the court may see no circumstances to render him or her a proper object of mercy. Reg. XVII. 1829, sect. 5.

Precedents of trial.

4034. Three prisoners convicted of aiding and abetting in a suttee were sentenced, two as the relations of the widow to imprisonment for one year, and the third for 6 months.*(b)* N. A. R. vol. 4, page 308. In a case of voluntary suttee, the father of the woman was sentenced to imprisonment for 7 years, four of the principal aiders and abettors for 5 years, and the others for one year. Two of the prisoners were released on appeal by the sudder court "in the absence of direct evidence of any active participation." Reports *W. P.* 1854, part 1, page 357. Another person subsequently convicted as an accomplice in the same suttee was sentenced to two years' imprisonment and fine in lieu of labor. Reports *W. P.* 1854, part 2, page 433.

(*a*) See preceding note.

(*b*) The above-noted are the only cases reported since the enactment of Reg. XVII. 1829. In the reports of illegal suttees, for which the aiders and abettors were brought to trial previously, the sentence was never more severe than imprisonment for 3 years; N. A. R. vol. 2, pages 179, 274, 279, 283, 286, 320, 391, and 392; and vol. 3, page 229: except where force was used to the widow to compel the sacrifice, in which case the sentence was for imprisonment for 5 years; N. A. R. vol. 2, page 91; and vol. 3, page 31: and in a case where the prisoner was sentenced to 7 years' imprisonment for assisting his daughter to burn herself with the corpse of her brother; N. A. R. vol. 2, page 246.

CHAPTER IV.

OF THEFT OF THE PERSON.

SECTION I.

OF PERSONS MISSING.

4035. Where the prisoner was convicted of wilful murder on his own confession, and pointed out a corpse as that of the murdered person which was, however, in such a state of decomposition that it could not be recognized, it was held that absence of proof as to the identity of the body was not sufficient to bar a capital sentence, and he was sentenced to death; *N. A. R. vol.* 2, *page* 104:—so, where no body was found, but the prisoner confessed to the murder, and there were marks of blood, and of the rolling or struggling of a body on the spot pointed out by the prisoner as that on which he killed the deceased, he was sentenced capitally; *N. A. R. vol.* 2, *page* 257. So, where the murder was clearly established against the prisoners, they were sentenced to death, although the body of the deceased was never found; *N. A. R. vol.* 3, *page* 175. But it has been held more frequently that a revocable sentence should be passed when, although the fact of the murder was fully proved, the body could not be found; and the prisoners were accordingly sentenced to imprisonment for life; *N. A. R. vol.* 3, *page* 339; *vol.* 4, *pages* 91, 140, 148, *and* 319. Where the sentence would have been imprisonment for life if the body had been found, its absence was not admitted in mitigation; *N. A. R. vol.* 4, *pages* 138, *and* 145. And sentence of imprisonment for life has been passed, where the actual death of the person supposed to be murdered was uncertain, no body being found, and the prisoners were sentenced only for the intent to kill; *N. A. R. vol.* 1 *page* 17, *and vol.* 3, *page* 332:—so, where there was no proof of the murder except that the prisoner confessed to having witnessed it, and to having some of the money plundered from the deceased, and the body could not be found; *N. A. R. vol.* 3, *page* 43:—so, where the prisoner was an accomplice in a river dacoity, and the missing person was presumed to have been drowned in endeavouring to escape from the robbers; *N. A. R. vol.* 1, *page* 204:—so, where the prisoners were convicted of embezzling goods in a fraudulent transaction, and there were strong grounds for presuming that they had made away with the owner and two other persons who were missing; *N. A. R. vol.* 1, *page* 324.—Where the murder was not proved, but the prisoners were convicted of severely maltreating a person since missing and of seizing his muth and property, they were sentenced to imprisonment for 14 and 7 years respectively; *N. A. R. vol.* 1, *page* 121.—When the prisoners have been convicted on violent presumption of having made away with persons, of whom nothing had been heard since they were seen in the prisoner's company, it has been usual to pass sentence of imprisonment

In cases of murder, when the body has not been found, the prisoner has sometimes been sentenced to death;

but generally to imprisonment for life:

so, where the fact of the murder was not clearly proved.

Conditional sentence of imprisonment until the missing persons were found;

until the missing person be produced, or it be proved that he died by means not implicating the prisoner; *N. A. R. vol.* 1, *pages* 226, 305; *vol.* 2, *pages* 46, 84; *vol.* 4, *pages* 47 *and* 327;—so, in a similar case, where the finding a scull, recognized as that of the missing boy by a peculiarity in the jaw-bone, was held not to be sufficient proof of identity to prove the actual murder, and consequently to warrant a capital sentence; *N. A. R. vol.* 3, *page* 122;—and where the presumptive evidence was very strong that the prisoner had murdered the missing girl, he was sentenced to imprisonment for life with the express proviso that the sentence would be altered if the missing girl were found, or her death accounted for to the exculpation of the prisoner; *N. A. R. vol.* 4, *page* 136;—but in later cases it has been held objectionable to pass such conditional sentence, as it tended to throw a doubt on the evidence on which the sentence was grounded; and the prisoners were therefore sentenced at once to such terms of imprisonment as appeared suited to their respective degrees of guilt; *N. A. R. vol.* 5, *pages* 21, 147. [A conditional sentence of this nature is said to be objectionable when there is no presumption that the missing person has been murdered; *see para.* 4048; but a conditional sentence of definite duration has sometimes been passed, when there was no presumption of murder, with a view to encourage the production of the missing person; *see para.* 4049.] Where the prisoners were convicted of beating a person since missing, but the injury inflicted was not deemed by the court sufficient to cause death, they were sentenced to imprisonment for one year; *N. A. R. vol.* 2, *page* 305. The fact that the missing persons had embarked with their property in the prisoners' boat, and had not been heard of since last seen in their company, was not considered evidence sufficient to warrant a sentence of conditional imprisonment as above, although the prisoners could bring no evidence to substantiate their assertion that the missing persons left their boat at a particular place of their own accord; and they were acquitted; *N. A. R. vol.* 2, *page* 336.

but the practice of conditional sentences has been lately held to be objectionable.

Case of acquittal for want of evidence.

SECTION II.

OF ABDUCTION.

Persons guilty of enticing, or of causing to be enticed from their homes, married women, or unmarried female minors, liable to what punishment by order of magistrate;

4036. If any person amenable to the jurisdiction of the zillah and city courts is convicted before a magistrate, or joint magistrate, of the offence of enticing and taking away, or causing to be enticed and taken away, a married woman living under the protection of her husband, or of any person having the care of her in his behalf; or of enticing and taking away, or causing to be enticed and taken away, an unmarried female under the age of maturity, viz. fifteen years, and living with her parents or other legal guardians, or any persons acting in their behalf; for the purpose of rendering such married woman, or unmarried female minor, a prostitute or concubine, or otherwise disposing of her in an unlawful manner, without the consent of the husband, parent, or other guardian, of the woman or minor thus disposed of; the person so convicted is liable to a sentence of fine

and imprisonment, to such extent as may appear adequate to the circumstances of the case, and does not exceed the powers vested in the magistrates by sect. 19, Reg. IX. 1807, viz. imprisonment for 6 months, and a fine not exceeding 200 rupees, commutable if not paid to a further period of imprisonment not exceeding 6 months. If in any instance the offender appears to merit a more severe punishment, he is to be committed for trial before the sessions court; and the provisions of sect. 6, Reg. XVII. 1817* are applicable to all such commitments [*i. e.* the futwa of the law officer, before whom the trial is held, is to declare only whether the prisoner is legally convicted, or if not whether there is strong ground of presumption, arising from his free confession, or from credible testimony, or from circumstantial evidence, that he is guilty of the crime charged against him: and if the futwa so given declares the prisoner legally convicted, or that there is strong presumption of his guilt, and the session judge before whom the trial is held concurs in the conviction of the prisoner or in the presumption of his guilt, so as to render him a proper object of punishment, and the circumstances of the case do not appear to call for a more severe punishment than what the sessions courts are authorized to adjudge under cl. 7, sect. 2, Reg. LIII. 1803,* the judge is to sentence the prisoner to suffer such punishment as is adequate to his guilt and the nature of the offence, not exceeding corporal punishment and imprisonment with hard labor for the term of 7 years]. Reg. VII. 1819, sect. 2.

and by order of session judge.

* *v. para.* 3026.

* *v. para.* 1814.

4037. The above provisions do not apply to cases of *forcible* abduction; and as such an offence is not one which the judge is specifically empowered by the regulations to punish, the trial must, if conducted with the aid of a jury, be referred to the sudder court under cl. 1, sect. 4, Reg. VI. 1832. Reports *W. P.* 1853, part 2, page 1219.

This does not apply to cases of forcible abduction.

4038. Assistants with special powers are competent to dispose of such cases. C. O. No. 7 of vol. 4.

Power of assistant.

4039. A suit for the recovery of damages in a civil court can be legally sustained against a party, who has already been punished for abduction by a sentence of a criminal court. Const. No. 1251.

Sentence under the above rule does not bar a civil suit for damages.

4040. A prisoner convicted (before the enactment of the above regulation) of the forcible abduction of a girl, aged 16, was sentenced to imprisonment for one year, and at the expiration of that period to be further imprisoned until he should produce the missing girl, or account satisfactorily for her non-appearance. In this case the prisoner had married the elder sister, and on her death wished to take the younger for his wife; and on the mother's refusal to consent committed the outrage for which he was tried. N. A. R. vol. 1, page 332.

Precedents of trial.

4041. A woman was convicted of inveigling the daughter of the prosecutor from his house with jewels, to accomplish which object she and the daughter administered deleterious drugs to the prosecutor and his family: the woman was sentenced to 7, and the daughter to 5 years' imprisonment: and two men who aided and abetted in the inveigling were sentenced, one to 30 stripes and 5 years,' and the other to 20 stripes and 3 years' imprisonment. N. A. R. vol. 4, page 84.

SECTION III.

OF CHILD-STEALING.

Complaints of female child stealing to be disposed of as cases of abduction, if the provisions of sect. 2, Reg. VII. 1819 are applicable.

* *See para.* 4036.

4042. If, on a complaint of female child-stealing, it appears that the circumstances of the case clearly bring it within the intent and meaning of sect. 2, Regulation VII. 1819*, it is to be taken up under it, the charge against the accused being so framed as to correspond with the exact words of the section. On conviction the magistrate is either to proceed to dispose of the case himself by passing sentence upon the defender within the limit of sect. 19, Reg. IX. 1807; or, if that sentence appear to him inadequate, by committing the case to the session judge, in order that he may dispose of it, under the provisions of sect. 6, Reg. XVII. 1817. C. O. No. 81 of vol. 4. *W. P.*

Cannot be punished under the rules applicable to theft.

4043. Child-stealing is not an offence which magistrates can try under Reg. XII. 1818. The offenders must invariably be committed to the sessions. This has been ruled by both courts in correspondence which passed between them in 1847. Letter of N. A. to Judge of Jessore, No. 210, February 20, 1852. Reports *L. P.* 1852, part 2, page 77. The offence of child-stealing is quite distinct from that of theft or robbery, and it is not punishable under the laws which apply to the latter. Reports *W. P.* 1853, part 2, page 1238.

A girl of 14 going with her own consent cannot be said to be stolen.

4044. Where the girl, of the theft of whom the prisoner was accused, was 14 years' of age, and it was proved that she had gone willingly with the prisoner and remained with her without constraint, it was held that the charge of child-stealing could not be sustained. Reports *W. P.* 1854, part 1, page 826.

There can be no theft, if the child was not under 10 years of age.

4045. Where the child, of the theft of whom the prisoners have been accused, was not under ten years of age, it has been held that they could not be convicted of child-stealing. The Mahomedan and the English law both rule that boys and girls of that age are competent to exercise their own will; and cannot therefore be compelled to accompany other persons. The prisoners may however be charged with theft of the ornaments which the children may wear at the time; or with abduction.(*a*) But as the charge of theft will not lie, so neither can a person be charged with the criminal receipt of the child under such circumstances. Reports *W. P.* 1854, part 1, page 826; and 1855, part 1, pages 491, 675, 777, 809, 885.

Charge.

4046. On a charge of stealing and selling a child, there can be a conviction for carrying away and selling it. N. A. R. vol. 6, page 322. But not for inveigling and enticing a child from his home for illegal purposes. Reports *W. P.* 1855, part 1, page 697.

If tried with the aid of a jury, trial must be referred.

4047. Child stealing is not an offence which session judges are specifically empowered by the regulations to punish; and therefore, when the case is tried with the assistance of a

(*a*) But a charge of abduction cannot be laid under sect. 2, Reg. VII. 1819 if the child has been forcibly carried off. Reports *W. P.* 1853, part 2, page 1219.

jury, it must be referred to the sudder court, under cl. 1, sect. 4, Reg. VI. 1832. Reports *W. P.* 1852, page 1130.

Precedents of cases: attended with death;

4048. Two prisoners convicted of secretly getting possession of a girl, 8 years of age, and afterwards from fear of discovery deserting her in such a manner as to cause her death; there being also a strong presumption that she had been murdered, and that they were concerned in it; were sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 389.

with selling the children;

Seven prisoners were convicted of stealing and selling a child, who was never recovered; and two of them of a second offence of the same nature, in which case however the child was recovered: in the first case, there being no sufficient ground for supposing that the child had been murdered, the court preferred a definite to an indefinite period of imprisonment, as suggested by the law officers (until the girl should be restored), and sentenced the prisoners to imprisonment for 7 years: in the second case, the two prisoners previously convicted were sentenced to 2 years' additional imprisonment, and a third as an accomplice for the single offence to imprisonment for 2 years: there were grounds for believing that all the prisoners convicted in the first case had for some time made a trade of stealing and selling female children; *N. A. R. vol.* 2, *page* 66. A woman convicted in two cases of child-stealing was sentenced by the session judge to imprisonment for 4 years; but the nizamut adawlut called for the proceedings and enhanced the term of imprisonment to 10 years; *N. A. R. vol.* 5, *page* 57:—so, where two prisoners were convicted of enticing away a boy and selling him into slavery, and the session judge sentenced them to imprisonment for one year in addition to the confinement which they had already undergone, the court called for the case, and sentenced them to imprisonment for 7 years; *N. A. R. vol.* 5, *page* 30.

with administering deleterious drugs.

A prisoner convicted of administering poisonous [or intoxicating] drugs to a whole family with a view to carry off one of the children, aged 11 years, while they were in a state of insensibility, was sentenced to imprisonment for 7 years; *N. A. R. vol.* 3, *page* 21.

Privity.

A prisoner convicted of having kidnapped a girl 8 years of age, and of offering to sell her, was sentenced to 30 stripes and imprisonment for 7 years; and another, convicted of concealing his knowledge of the kidnapping and of aiding in the intended sale, to imprisonment for 2 years; *N. A. R. vol.* 1, *page* 337.

Conditional sentence in such cases for a definite period.

4049. A prisoner, convicted of carrying away and selling a girl 5 years of age, was sentenced to 4 years' imprisonment, and a further period of 3 years, unless she should furnish information which might lead to the discovery of the missing child; *N. A. R. vol.* 2, *page* 308:—and it was held to be within the competence of a session judge to pass such conditional sentence, where the whole term of imprisonment does not exceed the period of 7 years; *N. A. R. vol.* 2, *page* 447. *Reports L. P.* 1855, *part* 1, *page* 175.

In order to give the girl in marriage.

4050. In a case of forcible abduction of a girl by a relation with the purpose of giving her away in marriage without the consent of her guardian, the prisoner was sentenced to imprisonment for 18 months and fine of 50 rupees in lieu of labor. *Reports L. P.* 1852, *part* 2, *page* 77.

Attempt to sell girls for the purposes of prostitution.

4051. Four prisoners convicted of aiding and abetting in the illegal detention of five girls, between 15 and 18 years of age, with intent to dispose of them in an unlawful

manner,—though it does not appear by what means they fell into the power of the prisoners, who carried them about the country in a boat and endeavoured to sell them for the purposes of prostitution,—were sentenced to imprisonment for 5 years. *N. A. R. vol.* 6, *page* 4.

Case of child-stealing in a foreign territory, and bringing him into the British provinces.

4052. An inhabitant of Lahore carried away a child without the knowledge of his parents, inhabitants of the same state, and settled in the British territories, in which he was accused by the parents and proved to have committed the crime. Held, that though the prisoner could not be tried in our courts for the child-stealing, as the act was committed in a foreign territory, yet he might be committed on the minor charge of retaining in his possession a child knowing him to have been stolen. Const. No. 1043.

SECTION IV.

OF SLAVERY.

The importation of slaves is a penal offence;

4053. The importation of slaves whether by land or by sea into the places immediately dependent on the presidency of Fort William, is strictly prohibited; and any person infringing this prohibition is liable to be prosecuted and punished for the offence by the courts of criminal judicature. Reg. X. 1811, sect. 2.

punishable by imprisonment and fine.

4054. Any person, who is convicted of the offence of importing slaves into the British territories, is to be sentenced to imprisonment for the period of 6 months, and to pay a fine to government, according to his circumstances in life, not exceeding however the sum of 200 rupees, commutable, if not duly discharged, to imprisonment for the further period of 6 months on the expiration of the former part of the sentence. Reg. X. 1811, sect. 3.

Disposal of persons so imported as slaves.

4055. Persons imported as slaves into the British territories are liable to be discharged, or sent back to their friends and connections in the country from which they have been imported, according as it appears most advisable to the magistrate by whom the decision on the case is passed. Reg. X. 1811, sect. 4.

The above provisions are applicable only to imported slaves.

4056. The above provisions are applicable only to the importation of slaves for the purpose of being sold, given away, or otherwise disposed of; and cannot be applied to the sale of slaves not imported into the British territories. C. O. No. 141 of vol. 1. Const. No. 99.

All slaves imported into a British province from any British or foreign province, are declared free.

4057. All slaves who subsequently to the enactment of the above provisions have been or may hereafter be removed by sea or land for purposes of traffic from any country, territory, or province, British or foreign, into any province now dependent, or that may become hereafter dependent on the presidency of Fort William, subsequently to the date on which it has or may become so dependent; or who have been or may be so removed from one province that now is or may hereafter become dependent, subsequently to the dates on

which they respectively have or may become dependent; are hereby declared free.(a) Reg. III. 1832, sect. 2, cl. 1.

Persons concerned in the sale or purchase of slaves so removed, are punishable by fine and imprisonment.

4058. All persons concerned in the sale or purchase as a slave of any man, woman, or child so removed, knowing him or her to have been so removed, on conviction thereof before a magistrate, are liable to be sentenced to imprisonment for the period of 6 months, and to pay a fine to government according to their circumstances in life not exceeding the sum of 200 rupees, commutable, if not duly discharged, to imprisonment for the further period of 6 months on the expiration of the former part of the sentence. Reg. III. 1832, sect. 2, cl. 2.

This does not prohibit the transfer of slaves for money, if not removed from one territory to another.

4059. Reg. III. 1832 does not prohibit the transfer of slaves for money, or other consideration, between persons residing within the British territories; it merely prohibits the removal of them for the purpose of traffic from one territory, British or foreign, to any other territory dependent on this presidency: consequently those slaves only are entitled, under its provisions, to their liberty, who have been so removed subsequently to the enactment of Reg. X. 1811. Const. No. 955.

Selling free-born persons is an offence. So is buying.

4060. The selling of free-born persons is prohibited by the Mahomedan law; and persons convicted thereof are liable to discretionary punishment. N. A. R. vol. 6, page 4. And according to a futwa of the kazi-ul-kuzat, dated September 8, 1853, it appears that in such cases the law makes no distinction between the seller and the purchaser. Both are equally punishable. It seems that a parent is not punishable, who sells his child during a time of famine in order to preserve his own life, unless it be sold for the purposes of prostitution. See also Reports *L. P.* 1853, part 1, page 630.

The complaint must be made by the person aggrieved. The prosecutor cannot be on the part of government.

Police cannot take cognizance.

4061. When certain prisoners were committed for selling and purchasing a woman, on the prosecution of government, it was held that the woman alone could legally appear as prosecutor against the accused; and that the accused must be discharged, without reference to the merits of the case, because there was not on the record any complaint in writing on the part of the woman. Held also, that, as the offence is only a misdemeanour, it was not competent to the police officers to take cognizance of it. Reports *W. P.* 1855, part 2, page 560.

Public officers are not to sell persons or the right to their services.

4062. No public officer is in execution of any decree or order of court, or for the enforcement of any demand of rent or revenue, to sell or cause to be sold any person, or the right to the compulsory labor or services of any person, on the ground that such person is in a state of slavery. Act V. 1843, sect. 1.

(a) The preamble thus explains the reasons for this enactment:—"Whereas in consequence of the extension of the possessions held under the presidency of Fort William, subsequent to the enactment of Reg. X. 1811, prohibiting the importation of slaves from foreign countries, a doubt has arisen whether the provisions of that regulation can be held to apply to cases of slaves removed from any part of the British possessions acquired subsequently to the passing of that regulation into any part of those then held under the said presidency: with a view to the removal of any such doubt, and also with a view to the entire prohibition of the removal of slaves for purposes of traffic from one part of the British territories to another, the following rules are enacted, &c."

The right to slaves is not to be enforced by the courts.

4063. No rights arising out of an alleged property in the person and services of another as a slave are to be enforced by any civil or criminal court or magistrate within the territories of the East India Company.(a) Act V. 1843, sect. 2.

The right to property remains the same though the owner or the person from whom it is derived was a slave.

4064. No person who has acquired property by his own industry, or by the exercise of any art, calling, or profession, or by inheritance, assignment, gift, or bequest, is to be dispossessed of such property or prevented from taking possession thereof on the ground that such person or that the person from whom the property has been derived was a slave. Act V. 1843, sect 3.

What is a penal offence if done to a free person, is equally so if done to a slave.

4065. Any act which would be a penal offence if done to a free man is equally an offence if done to any person on the pretext of his being in a condition of slavery. Act V. 1843, sect. 4.

Sale of a slave by one not the owner is punishable.

4066. Under this section it was ruled, that an attempt to sell a slave by one not her owner, is a punishable offence. Reports *L. P.* 1852, part 2, page 281.

SECTION V.

OF EMIGRANTS AND CRIMPING.

Definition of crimping.

4067. Any person who by force or fraud, unlawfully detains in any place or decoys to any place any native of India, with intent to force or prevail upon him to enter into any service, or contract for service, to be performed out of the territories under the government of the East India Company, into which he was not minded to enter without such force or fraud, or who, by means of false imprisonment, intoxication, intimidation, force, or fraud, causes any native of India to enter into any such service or contract for service, or who attempts, by force, or fraud, or by any false promise, pretence, or representation, to cause any native of India to depart either by land or water from the territories under the government of the East India Company, is a crimp, and guilty of crimping, within the meaning of this Act. Act XXIV. 1852, sect. 1.

Meaning of term emigration.

4068. The departure of any person out of the territories under the government of the East India Company, by land or water, is emigration from the said territories within the meaning of Act XIV. 1839, and of this Act. Act XXIV. 1852, sect. 2.

No offence to contract for labor in a foreign settlement on the main land of India.

4069. After the passing of this Act no person shall be liable to the penalties of Act XIV. 1839, for making, in good faith, any contract with any native of India, for labor to be performed in any foreign settlement on the main-land of India, or for knowingly abetting or

(a) This provision supersedes Const. No. 887, which declares that a magistrate has no authority to interfere to deliver to the petitioner a child whom he alleges to be his absconded slave;—and so, also, Const. No. 939 which directs, that, on the complaint of a party alleged to be a slave that he is detained by violence, the enquiry should in the first instance be entered into in the criminal department, and, if violence be proved, redress should be afforded him, and the opposite party referred to a civil action to prove his claim.

aiding any native of India in emigrating from the said territories to any such foreign settlement. Provided that if any person shall make any contract with any native of India for service or labor to be performed by such native out of the territories under the government of the East India Company, or cause any native of India to depart from the territories under the government of the East India Company, or knowingly aid or abet such native of India in emigrating from the said territories to any such foreign settlement with intent that such native shall afterwards depart from India, such person shall be deemed to be a crimp and guilty of crimping within the meaning of this Act, and proof of the subsequent departure of such native from India, from any place out of the territories under the government of the East India Company within the period of six months from the time of the departure of such native from the said territories under the government of the East India Company, shall be *primâ facie* evidence of such intent. Act XXIV. 1852, sect. 3.

But to contract for labor out of the Company's territories is crimping.

Departure of native from said territories *primâ facie* evidence.

4070. Every crimp within the meaning of this Act is liable to be imprisoned for a term not exceeding six calendar months, and to pay a fine not exceeding five hundred rupees. Act XXIV. 1852, sect. 4.

Penalty for crimping.

4071. Every person who shall, by means of intoxication, false imprisonment, or intimidation, or by means of any false promise, pretence, or representation, force or decoy any native of India out of the territories under the government of the East India Company, or fraudulently cause any such native to depart from the said territories, shall be liable to be imprisoned for a term not exceeding three years. Act XXIV. 1852, sect. 5.

Penalty in the case of force, fraud, or decoy.

4072. In every case in which under this Act imprisonment may be awarded for any offence it shall be lawful for the court, who may award such imprisonment, to sentence the offender to be kept to hard labor during the whole or such period or periods of such imprisonment as to such court shall seem meet. Act XXIV. 1852, sect. 6.

Labor may be awarded.

4073. Every person who makes with any native of India any contract of labor to be performed in any British or foreign colony without the territories of the East India Company; or who knowingly abets or aids any native of India in emigrating from the said territories for the purpose of being employed as a laborer; is liable, on conviction before a magistrate or justice of the peace, to a fine not exceeding 200 rupees for every native so contracted with, aided, or abetted; and, in default of payment of such fine, to be imprisoned for a term not exceeding 3 months;—or to be imprisoned, or imprisoned and kept to hard labor for a term not exceeding 3 months for every native so contracted with, provided that such imprisonment shall not in any case exceed 6 months for any one offence. Act XIV. 1839, sect. 2. Act XXIV. 1852, sect. 7.

Penalty for contracting with a native to labor in a British or foreign colony, or aiding a native in emigrating for such purpose.

4074. In every case in which any person shall commit an offence under section 2, Act XIV. 1839, as explained and amended by this Act, after having been previously convicted, either before or after the passing of this Act, of an offence under that section, such person shall be liable, upon conviction before a criminal court of competent jurisdiction, to be imprisoned, or imprisoned and kept to hard labor for any period not exceeding one year;

Penalty for second offence.

and in every indictment, information, or other proceeding for such an offence committed after such previous conviction, it shall be sufficient, after describing the offence, to state that the offender was at a certain time and place convicted of an offence under section 2, Act XIV. 1839, without otherwise describing such previous offence or conviction; and a certificate of the previous conviction, purporting to be signed by the officer having the custody of such previous conviction, or by the deputy or legally authorized assistant of such officer, shall, with proof of the identity of the person of the offender, be sufficient *primâ facie* evidence of the first conviction, without proof of the signature or official character of the person appearing to have signed such certificate. Act XXIV. 1852, sect. 8.

Proof of previous conviction.

Meaning of term magistrate.

4075. The term "magistrate" in Act XIV. 1839 shall extend to joint magistrates and persons lawfully exercising the powers of a magistrate. Act XXIV. 1852, sect. 9.

The above is not applicable to native seamen or menial servants:

4076. Nothing in this Act contained is to be taken to apply to any native seaman, who of his own free-will contracts to navigate any vessel, or who embarks on board such vessel in pursuance of such contract; or to any person who contracts to serve as a menial servant only, or who embarks as such menial servant. Act XIV. 1839, sect. 3.

nor to persons emigrating from Calcutta, Madras, or Bombay, to Mauritius, St. Lucia, Grenada, British Guiana, or Trinidad.

4077. The above Act does not apply to the emigration of laborers being native inhabitants of the territories under the government of the East India Company from the ports of Calcutta, Madras, or Bombay, to the Mauritius, St. Lucia, Grenada, Jamaica, British Guiana, or Trinidad; but is in full force in all the other ports of India, and in regard to emigrants from India proceeding to other places than those above named. Act XV. 1842, sect. 1. Act XXXI. 1855, sect. 2. Act XXI. 1844, sect. 1.

Magistrates to look closely after the duffadars employed by the emigration agents, who carry a certain kind of purwana in order to give the appearance of authority to their proceedings.

4078. The duffadars employed by emigration agents are provided with a species of purwana by them, addressed in English to the judges, magistrates, and collectors of the zillahs, but in the native languages to the darogahs of police, zumeendars and others, for the purpose of securing them from interruption: as it is extremely probable that such purwanas are represented by these men to the ignorant people as official documents giving them some degree of authority in their proceedings, magistrates are required to be on the alert to detect and bring to punishment any duffadar or other person who, being in possession of a document of this nature, may practise fraud, extortion, or oppression of any kind upon the people. They should also discourage the use of these papers or purwanas, and keep so strict an eye upon the movements of those who bear them, that they may be made aware of their producing no real advantage, but on the contrary exposing them to suspicion and distrust. C. O. Sup. Pol. *L. P.* No. 25 of 1843.

CHAPTER V.

OF FIAL-I-SHANIA AND ZINA.

SECTION I.

OF RAPE.

Case may be taken up, though no complaint is preferred.

4079. There is nothing in the regulations which prohibits a magistrate from taking cognizance of cases of rape in which no complaint is preferred; but he should exercise this power with the utmost discretion and with due regard to the feelings of the injured party and her family. Const. No. 670.

Cognizable by police officer.

4080. A charge of rape may be legally referred to police officers for investigation, or may be preferred directly at the thana. Const. Nos. 1174 and 1365.

Razeenamah inadmissible. If the parties refuse, the government pleader is to prosecute.

4081. A razeenamah is not admissible in a case of rape, as that offence is described in cl. 3, sect. 6, Reg. XVII. 1817 as a heinous crime: and if the woman, on whom the violence has been committed, and her husband refuse to prosecute, the government pleader should be appointed to conduct the prosecution. Const. No. 403. N. A. R. vol. 3, page 127.

So, where the woman is a minor and therefore unable to prosecute.

4082. Where the only prosecutor was the ravished girl, who was an infant and whose examination was taken without oath, the nizamut adawlut held that the trial was informal, and returned the proceedings with instructions that the vakeel of government should be directed to stand forward as prosecutor. N. A. R. vol. 3, page 170.

Futwa to be given in trials for rape.

4083. In trials before the sessions courts for rape, the futwa of the law officer of the sessions court, before whom the trial is held, is to declare only whether the prisoner is legally convicted, or if not whether there be strong ground of presumption, arising from his free confession, or from credible testimony, or from circumstantial evidence, that he is guilty of the crime charged against him. Reg. XVII. 1817, sect. 6, cl. 1.

The above does not apply to a case of rape attended with robbery.

4084. The above provision, which requires the law officer to declare only whether the prisoner is legally convicted, and to refrain from stating to what punishment the Mahomedan law renders him liable, is not applicable to a case of rape attended with robbery. N. A. R. vol. 2, page 267.

On conviction of rape, the trial is to be referred;

4085. If the prisoner is convicted, or presumed guilty, of the heinous crime of rape, the session judge is not to pass any sentence; but is to refer the trial to the nizamut adawlut, for the sentence of that court, under the general regulations in force. Reg. XVII. 1817, sect. 6, cl. 3.

even, if the conviction is for the attempt merely.

4086. It was held unnecessary, under the above provision, to refer a trial for rape to the nizamut adawlut, unless the session judge and his law officer be of opinion that the offence was actually consummated; or unless the judge consider, in the case of an attempt, that the punishment which he is authorized to inflict by cl. 7, sect. 2, Reg. LIII. 1803, *viz.*, imprisonment for 7 years and stripes, is insufficient. N. A. R. vol. 2, page 182. But it seems that this ruling no longer holds; for, in a late case, the court quashed the conviction of a prisoner for an attempt at rape, and directed the judge to refer the trial in the regular course, on the ground that attempts to commit offences follow the course prescribed for the offences themselves. Reports *L. P.* 1852, part 2, page 84.

It is not necessary to a conviction, that the act should be complete.

4087. Where the prisoner was seen in the act of committing a rape and seized in that situation, and the circuit judge referred the case under the idea that an attempt only had been established by the evidence, it was held that the completion of the offence was not necessary to a conviction. N. A. R. vol. 3, page 215.

The consent of a child is immaterial.

4088. It was held that the consent of a girl of the age of eight years was immaterial; and the prisoner was sentenced, on a charge of "illicit carnal knowledge of the prosecutor's daughter," (in consideration of his youth) to 15 stripes and imprisonment for 6 months. N. A. R. vol. 2, page 452. When the girl was about 11 years of age, it was held that her consent was sufficient to bar conviction of rape. Reports *W. P.* 1854, part 1, page 673. But in another case where the girl was the same age, it was held that the simple fact of sexual intercourse having taken place is sufficient to establish that of accompanying violence. Reports *W. P.* 1854, part 2, page 292. So, where the girl called herself 12 years of age, but the session judge considered from her appearance that she was not more than 8 or 9. Reports *W. P.* 1855, part 1, page 335.

Consent obtained by fraud does not absolve.

4089. When a man fraudulently induces the woman to admit his intercourse with her under the belief that he is her husband, the offence amounts to rape. Reports *W. P.* 1856, part 1, page 575.

On charge of rape conviction cannot be had of adultery.

4090. Where the prisoner is tried on a charge of rape, he cannot be convicted of adultery. N. A. R. vol. 5, page 140. This supersedes a former precedent in which the contrary doctrine was held; vol. 2, page 317.

The evidence of the party ravished not sufficient except on oath, or strongly corroborated.

4091. Where the only evidence against the prisoner was that of the girl alleged to have been ravished, and she was too young to be sworn, the court directed his release. N. A. R. vol. 2, page 415. So, where the woman violated was deaf and dumb, and it was not possible to administer an oath to her; the prisoner, though indicated by her as the person who ravished her, was acquitted for want of evidence. N. A. R. vol. 3, page 59. But where the evidence of the ravished girl, aged about nine years, and of another girl of the same age, was corroborated by that of the girl's mother and of others as to the state of her clothes and body, the proof was held sufficient for conviction. N. A. R. vol. 2, page 292. The declaration of the woman, though made almost immediately after the occurrence to her relations and afterwards taken down by the police officers, was held alone insufficient for conviction; N. A. R. vol. 2, page 411: and so, the evidence of the woman on oath corroborated by witnesses whose veracity was doubtful, was considered insufficient

See rules regarding the competency of witnesses in paras. 550 et seq.

to prove the violence, though it might substantiate a charge of adultery. N. A. R. vol. 4, page 35.

Evidence of others insufficient except on oath.

4092. Where there was no evidence to prove the identity of the prisoners, but the statements of four children examined without oath, the court returned the proceedings with directions, that such of them as evinced a sense of the obligation of deposing truly should be sworn to the truth of their depositions. N. A. R. vol. 3, page 194.

Where the prisoners confessed, but there was no other evidence, they were acquitted.

4093. When the prisoners were originally tried for highway robbery and acquitted; but, though no charge of rape was preferred against them by the prosecutrix on that occasion, four of them acknowledged themselves and implicated a fifth prisoner, as concerned either as principals or accessaries in a rape on her person; and they were all indicted on these confessions; as no other evidence appeared against them, they were acquitted. N. A. R. vol. 3, page 325.

Precedents of convictions: common cases;

4094. The usual sentence in cases of rape appears to have been imprisonment for 7 years with the addition in some cases of stripes; *N. A. R. vol.* 1, *page* 381; *vol.* 3, *pages* 72, *and* 127. So, where the girl was only nine or ten years of age; *N. A. R. vol.* 1, *page* 212; *vol.* 3, *page* 215; *vol.* 4, *page* 318: but in a later case where the girl was of that age the prisoner was sentenced to 14 years' imprisonment with labor and irons in banishment; *N. A. R. vol.* 6, *page* 266. Where the girl was only seven years of age, the prisoner was sentenced to 30 stripes and imprisonment in banishment for 10 years; *N. A. R. vol.* 2, *page* 267. Where death was the consequence of the rape on a girl of ten years of age, the prisoner was sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 4, *page* 73. Where the prisoner was convicted of rape and sentenced to imprisonment for 5 years, two boys who held the woman were sentenced to imprisonment for 6 months and a fine of 20 rupees in lieu of labor; *N. A. R. vol.* 5, *page* 140. A boy, thirteen or fourteen years of age, convicted of rape, was sentenced in consideration of his youth to 3 years' imprisonment; *N. A. R. vol.* 3, *page* 147. Where the prisoner was charged with the rape of a child under 4 years of age, the court viewed it merely as an attempt, and sentenced him to imprisonment for 5 years and stripes; *N. A. R. vol.* 2, *page* 182: and so, where a boy only 10 years old was convicted by the futwa of rape on a girl only three years of age, the court sentenced him as for a misdemeanor to imprisonment for one year; *N. A. R. vol.* 3, *page* 87.

in a case attended with homicide;

accessaries;

by a boy;

on a child under 4 years of age.

Mahomedan law of zina.

Definition.

4095. According to Mahomedan law, the consent or refusal of the woman does not alter the nature of the offence in cases of criminal intercourse; and the same fixed penalty must be awarded whether the man has used violence, or has been engaged in an act of simple adultery. The term zina includes adultery, fornication, rape, and incest; and it is only necessary that the act should have been committed by a Mussulman married, sane, free, and of mature age, with a woman in whom the man has no right either by marriage or bondage: the punishment is barred by the existence of any doubt on the question of right, or by any conception in the mind of the accused that the woman was lawful to him, and by his alleging such idea as his excuse. From one definition of whoredom given by the two disciples, it would seem that the offence to be punishable must have been complet-

ed(*a*); but in the precedents above quoted the law officers appear to have abandoned this doctrine, or to have compromised it by awarding tazeer in such cases. The evidence of women is inadmissible to establish the charge; and the law is not satisfied with less than the positive testimony of four men, eye-witnesses to the fact, and of ascertained credit; nor is the apparent probity of such witnesses sufficient, but their integrity must be ascertained by the magistrate both by open and secret purgation. If less than four competent witnesses bear evidence, they are liable to the punishment of slander, unless the accused subsequently confess; and so, if one of the witnesses is afterwards found to have been incompetent, and if any witness retract his testimony, it is no longer valid. The confession requisite to establish the charge, in defect of evidence, must be made by a person of sound mind and mature age four times, at four different sittings of the kazee; who is directed to turn the party away without receiving the confession until the fourth time, and is authorized to suggest a denial, or the mention of circumstances which may exculpate or absolve from the legal penalty. The person who has confessed may also at any time withdraw his confession; even during the infliction of the punishment; and if his sentence be founded upon it, he must be discharged. A confession, though repeated four times, made before any other person than the kazee, is insufficient for conviction: nor can conviction be founded partly on confession, partly on evidence. The stated punishment in a case of zina, in which all the requisites above mentioned are fulfilled, is stoning to death; but where the prisoner, although free, sane, and adult, is not a Mahomedan, or is unmarried, he (or she) is liable to a sentence of one hundred stripes, and (in the case of the man) to temporary banishment or imprisonment at the discretion of the kazee. There are various other minor circumstances noted, which may prevent the conviction or the punishment; but it is unnecessary here to give them in detail; the more especially, as, under the regulations, a conviction ensues without reference to and notwithstanding their existence.(*b*)

Evidence requisite to proof.

Confession.

Punishment.

(*a*) Hed. Trans. vol. 2, page 27.

(*b*) Hed. Trans. book 7. Harington's Analysis, vol. 1, page 266.

NOTE.

In English law, an infant under the age of fourteen years is presumed by law unable to commit a rape; but he may be a principal in the second degree, as aiding and assisting, if it appear by the circumstances of the case that he had a mischievous intent. Nor is evidence admissible against him to show that in point of fact he has attained the full state of puberty, and was capable of committing the crime. A husband also cannot be guilty of a rape upon his wife; but he may be guilty as a principal in assisting another person to commit a rape upon her: and in such case the wife is a competent witness against her husband. It must be proved that the offence was committed against the will of the woman, which of course implies violence; but it is no excuse that she yielded at last, if her consent was forced from her by fear of death or duress; and so, it is rape if the connection took place when she was in a state of insensibility from liquor, having been made drunk by the prisoner, though the liquor was given only for the purpose of exciting her. Nor is it any excuse that she consented after the fact; or that she was a common strumpet, for she is still under the protection of the law, and may not be forced; or that she consented at first, if the offence was afterwards committed by force or against her will; or that she was a concubine to the ravisher, for a woman may forsake her unlawful course of life, and the law will not presume her incapable of amendment. All these circumstances, however, are material to be left to the jury in favor of the accused,

more especially in doubtful cases, and where the woman's testimony is not corroborated by other evidence. It seems doubtful whether the carnal knowledge of a woman, under circumstances which induce her to suppose it is her husband, amounts to a rape; and where the indictment has been for rape under such circumstances, the prisoners have been convicted of an assault under a special statute, which enacts, that on the trial of any person for any felony, where the crime charged includes an assault against the person, the prisoner may be acquitted of the felony and punished for the assault. To constitute the offence of rape there must be a penetration; and any, the slightest, penetration will be sufficient; even where the hymen has not been ruptured; "but where that which is so very near to the entrance has not been ruptured, it is very difficult to come to the conclusion that there has been penetration so as to sustain a charge of rape." But it is not necessary to prove emission; and where the circumstances are proved to have been such that no emission did or could take place, the offence is complete if the penetration is proved. The party ravished, says Lord Hale, may give evidence upon oath, and is in law a competent witness; but the credibility of her testimony, and how far she is to be believed, must be left to the jury, and it is more or less credible according to the circumstances of fact that concur in that testimony. For instance, if the witness be of good fame, if she presently discovered the offence, and made pursuit after the offender; showed circumstances and signs of the injury; if the place, in which the fact was done, was remote from people, inhabitants, or passengers; if the offender fled for it; these and the like are concurring evidences to give greater probability to her testimony, when proved by others as well as herself. On the other hand, if she be of evil fame, and stand unsupported by the testimony of others; if she concealed the injury for any considerable time, after she had an opportunity to complain; if the place, where the fact was alleged to have been committed were such that it was probable she might have been heard by others, and she made no outcry; such circumstances carry a strong, but not a conclusive, presumption that her testimony is false. The defendant may give evidence of the woman's notoriously bad character for want of chastity or common decency; or that she had before been connected with himself; but he cannot give evidence of any other particular facts to impeach her chastity: but if, on cross-examination, she deny having had intercourse with other men than the prisoner, those men may be called to contradict her. So, what she herself said so recently after the fact as to preclude the possibility of her being practised on, has been holden to be admissible in evidence as a part of the transaction; but the particulars of her complaint are not evidence of the truth of her statement. A strict caution is given by Lord Hale with regard to the evidence for the prosecution in cases of rape; "an accusation easily to be made, and hard to be proved, and harder to be defended by the party accused, though ever so innocent." The unlawful and carnal knowledge and abuse of a girl under the age of ten years is felony; and if the girl is above the age of ten and under the age of twelve years, the offence is a misdemeanor; and in these cases it is immaterial whether the act was done with or without the consent of the female. The child herself, however tender her age, if capable of distinguishing between right and wrong, may be examined in proof of the offence; but her declarations are inadmissible; though the fact of her having complained of the injury, recently after its having been received, is evidence in corroboration.—*Roscoe and Archbold.*

SECTION II.

OF ADULTERY, FORNICATION, AND INCEST.

The charge of adultery must be preferred by the husband of the adultress;

4096. In cases of adultery, it is requisite for the conviction and punishment of a married woman, that she be prosecuted by her husband; and no other person is to be deemed competent to prosecute, or to prefer the charge against her, in such cases. Reg. XVII. 1817, sect. 6, cl. 4.

as well against the adulterer, as against the wife.

4097. Although the wording of the above provision does not specifically restrict the magistrate in cases of adultery from proceeding against the adulterer, when the husband of the adulteress does not come forward to prosecute, yet by the spirit of the enactment the restriction is equally applicable to such cases. So, neither can the session judge direct the commitment of a woman on a charge of adultery, unless the husband prefers such charge. Const. No. 670. N. A. R. vol. 2, page 421; and vol. 3, page 298.

And the complaint of the husband must distinctly specify the charge of adultery.

4098. Where the husband in his original petition of complaint to the magistrate charged the prisoner with having enticed and taken away his wife with certain ornaments and clothes, and with illegally detaining his wife and property, and prayed for redress under Reg. VII. 1819; and afterwards, on questions by the magistrate, was induced to prefer the higher charge of adultery, and to include the wife in the accusation; and the magistrate then committed the prisoners for trial on the charge of adultery; it was held that the proceedings of the magistrate were irregular and exceptionable, and that the commitment was under the above provisions illegal. N. A. R. vol. 3, page 177.

But where the husband brought the charge before the magistrate in the course of a judicial investigation, charge by petition was held unnecessary.

4099. Where a prisoner, accused of the murder of his wife, pleaded in justification an improper intimacy between her and another man; and the magistrate swearing him to the truth of the charge proceeded against the alleged paramour for adultery; the nizamut adawlut held that the husband's charge so delivered was sufficient, and that a charge by petition was unnecessary; as the object of Reg. VII. 1811 is merely to restrict the police officers from taking cognizance of such offences, and that object is not in any way defeated by the course pursued in the present instance. Const. No. 1199.

Charge will not lie, if *nika* has been performed.

4100. On a charge of adultery it is a sufficient defence that the kazi performed the marriage ceremony, called *nika*, between the prisoners, after having satisfied himself that the woman had been divorced by her first husband. Reports *W. P.* 1855, part 2, page 878.

A charge of incest may be prosecuted on the part of government.

4101. As the crime of incest is of the nature of an offence against society and not of a private wrong, there is no reason why a person guilty of that offence should not be prosecuted on the part of government. The above provisions refer only to adultery, and leave all other kinds of zina, under which term incest is specifically included in the preamble of Reg. XVII. 1817, to be dealt with in the usual method. Const. No. 865.

Evidence of wife admissible against paramour.

4102. A wife's evidence may be taken against her paramour on a charge of adultery preferred against him by her husband. Reports *L. P.* 1855, part 1, page 232.

Futwa to be given in such cases.

4103. In trials before the sessions courts for adultery, or any other offence within the provisions of the Mahomedan law for cases of zina, and fial-i-shania, the futwa of the law officer, before whom the trial is held, is to declare only whether the prisoner is legally convicted, or if not whether there is strong ground of presumption, arising from his free confession, or from credible testimony, or from circumstantial evidence, that he is guilty of the crime charged against him. Reg. XVII. 1817, sect. 6, cl. 1.

Sentence to be passed by the sessions court.

4104. If the futwa so given declares the prisoner legally convicted, or that there is strong presumption of his guilt, and the session judge, before whom the trial is held, concurs in the conviction of the prisoner, or in the presumption of his guilt, so as to render him a proper object of punishment, and the circumstances of the case do not appear to call for a more severe punishment than what the sessions courts are authorized to adjudge under cl. 7, sect. 2, Reg. LIII. 1803*, the judge is to sentence the prisoner to suffer such punishment as is deemed adequate to his guilt and the nature of the offence, not exceeding corporal punishment and imprisonment with hard labor for the term of seven years. Reg. XVII. 1817, sect. 6, cl. 2.

* *v. para* 1314.

Attempt not punishable.

4105. A mere attempt to commit adultery is not punishable under these provisions. The prisoner effected an entry into the house of the prosecutrix at night, and proposed to commit adultery with her: held that the magistrate should have punished him for trespass. Reports *W. P.* 1854, part 1, page 651.

Harbouring adulterers is an offence.

4106. By the Mahomedan criminal law, persons who harbour adulterers are punishable by acoobut.(*a*) N. A. R. vol. 2, page 42.

Precedents.

4107. A prisoner convicted of adultery was sentenced to imprisonment for one year with labor. N. A R. vol. 2, page 317. A brother and sister convicted of incest were sentenced, the former to 3 years', and the latter to 2 years' imprisonment with labor redeemable by fine. Reports *L. P.* 1852, part 1, page 51.

SECTION III.

OF SODOMY.(*b*)

Such trials need not be referred; but fall within the discretionary sentence which the session judge is competent to pass.

4108. As the regulations prescribe no specific punishment for the offence of sodomy, and as the futwa of the law officers upon conviction is usually one of discretionary punishment by tazeer, it must be considered as falling under the rule laid down in cl. 7, sect. 2,

(*a*) This is taken from the marginal note of the report; but it would seem from the body of the report that the law officers convicted the accused of "connivance and sheltering the adulterer and adulteress in their houses," which implies a more active assistance then merely harbouring. The judge of circuit, however, before whom the case was tried, doubted whether this was a conviction of a punishable offence, and made this question one of the points of reference; and as all the prisoners were acquitted by the nizamut adawlut, there is nothing to show in what manner the court viewed the dictum given above. For the Mahomedan law regarding adultery, &c., see para. 4095.

(*b*) In English law, the evidence required to prove this offence is the same as in rape, and penetration alone is sufficient; but it is not necessary to prove the offence to have been committed against the consent of the person upon whom it was perpetrated; and both agent and patient (if consenting) are equally guilty. If it be committed on a boy under fourteen years of age, it is felony in the agent only; and the same, it should seem, as to a girl under twelve.

Reg. LIII. 1803. There is no necessity, therefore, for referring such trials to the nizamut adawlut, unless the session judge differs in opinion with his law officer as to the proof of the offence, or deems the punishment of stripes and imprisonment with hard labor for 7 years insufficient. Const. No. 353.

Fetters to be adjudged in all cases.

4109. Where a judge passed sentence of imprisonment with labor but without irons for an attempt to commit sodomy, the court held that a person convicted of that crime should never be exempted from fetters. Reports *L. P.* 1853, part 1, page 758.

Mahomedan law.

4110. According to the doctrines of Aboo Yoosuf and Imam Mahomed, the crime of sodomy is classed by the Mahomedan law with that of zina, and is punishable in the same manner; but this opinion is rejected by Aboo Huneefah, who holds that punishment can be awarded only by tazeer: and the two disciples agree, that if the conditions on which alone hudd can be awarded (for which see para. 4095) are not fulfilled, the offender if presumed guilty is liable to discretionary punishment. The above refers to sodomy committed with a man or woman; if committed with a beast, it is admitted by all that hudd is not incurred, and that the punishment is discretionary. The *Jama Sagheer* directs that the penalty inflicted in cases of sodomy should be severe, and that the offender should be confined until he declare his repentance. N. A. R. vol. 1, page 234; and Hedaya translation, vol. 2, page 26.

Precedents of trials.

4111. A prisoner convicted of forcibly committing sodomy on a boy aged 6 or 7 years was sentenced to 25 stripes and imprisonment for 10 years; *N. A. R. vol.* 2, *page* 238, Where violence was alleged by the boy, aged 10 years, and the prisoner confessed to committing the offence, but declared that it was done with the boy's consent, he was sentenced to 25 stripes, tusheer, and imprisonment for 7 years; *N. A. R. vol.* 1, *page* 234. Where two prisoners were convicted on their own confession of sodomy, and said that it was their occupation, and a third prisoner was convicted of having instigated and aided in the commission of the offence, they were each sentenced to 30 stripes, tusheer, and imprisonment for 8 years; *N. A. R. vol.* 2, *page* 49.

BOOK VI.

OF OFFENCES AGAINST PROPERTY.

CHAPTER I.

OF ROBBERY, THEFT, AND RECEIVING STOLEN PROPERTY.

SECTION I.

OF ROBBERY BY OPEN VIOLENCE.

Definitions.
Of robbery by open violence.

4112. Any person or persons who, in the day or in the night, go forth with any offensive weapon, or in a gang with or without an offensive weapon, with the criminal intent of committing robbery; and by force or intimidation rob, or attempt to rob, any person or persons on or near a highway; or on a river, lake, or other water; or in or near a city, town, or village; or in any other place whatever; or attack by open violence, and rob, or attempt to rob, any dwelling-house, or other house or building; or any tent, boat, or other receptacle of persons or property in which there is any person or property at the time of such robbery, or of such attempt to rob; are to be deemed guilty of the crime of robbery by open violence (denominated in the Mahomedan law *sarika-i-kubra*, and more commonly *shabkhuni*, or *dacoity*); and on due conviction thereof whether by free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, are to be adjudged to suffer such of the penalties declared in the next section, as may be applicable to the case, viz. according as the robbery may be with or without homicide, wounding, maiming, or other personal injuries; or with or without other circumstances of aggravation. Reg. LIII. 1803, sect. 3, cl. 1.

Meaning of the term offensive weapon.

4113. Instead of the expression "person going forth with any offensive weapon," the term "armed persons" is used in Reg. III. 1825; and it was declared by Const. No. 399 that clubs and sharpened bamboos should be considered as arms within the meaning of the regulation: that regulation was subsequently repealed by Reg. XVI. 1825, which notes more particularly "any species of fire-arms, or spears, swords, clubs, or other weapons;"

but the clause from which this is quoted has also been repealed by Reg. I. 1831: and it may therefore be held that clubs and sharpened bamboos fall within the meaning of the term "offensive weapon" used in the above definition.

More than two persons are required to constitute a gang;

4114. In a case of highway robbery by two persons unarmed (the presence of a third person, though stated in the confession of one of the prisoners, not being proved by the evidence on record) it was held that more than two persons are required to constitute a gang, so as to bring the case within the above definition. N. A. R. vol. 2, page 172.

and in such case it is not necessary that they should be armed;

4115. Under the above definition a number of persons going out and committing robbery, is sufficient to constitute the offence of gang robbery or dacoity, although they were neither armed, nor guilty of any act of aggravation. Const. No. 750.

but if unarmed, there must be more than one.

4116. But in no case can a robbery committed by a single unarmed individual, fall within the definition of robbery by open violence. N. A. R. vol. 2, pages 23 and 53.

Snatching from the person does not constitute the offence.

4117. Snatching or forcibly taking property from the person without any previous intimidation, personal injury, or violence, when the robber is unarmed, does not constitute the offence of highway robbery, or robbery by open violence. Const. No. 228. N. A. R. vol. 1, page 269; and vol. 2, page 153. Nor is it theft (under the Mahomedan law) if openly done. It may be a minor form of highway robbery, if committed on the highway, or it may be one of the miscellaneous offences punishable by tazeer under that law. Reports *L. P.* 1853, part 2, page 143.

Example of case in which theft became robbery by open violence.

4118. Three persons broke open a granary, and were engaged in carrying out grain and other property, when they were discovered by certain police officers going their rounds: the robbers immediately took to flight, leaving their booty behind; but being closely pursued and overtaken, turned about, and attacked their pursuers. This was held to be dacoity. N. A. R. vol. 1, page 238.

And where violence was subsequent to the first entry.

4119. Where a gang of more than three armed men entered a house without using violence, but subsequently broke open the door of one of the inner houses and carried off a bell-metal pot, and afterwards severely beat the inmates in the attempt to rescue one of their number, they were convicted of dacoity; and it was held that, wherever the violence is simultaneous with the entry in such cases, the crime falls within the above definition. N. A. R. vol. 3, page 271.

4120. Where a gang of twenty men armed with clubs secretly effected an entry into a house, and afterwards maltreated the inmates, it was held sufficient to constitute the crime of robbery by open violence as defined above. N. A. R. vol. 2, page 217.

Police.

Magistrates are to report immediately to the superintendent of police in English the occurrence of any aggravated case of dacoity; and afterwards to make a weekly report of their proceedings.

4121. Magistrates are not only to communicate freely with the superintendent of police, either privately or publicly, on the subject of gang-robbery; but they are also required, immediately on the receipt of intelligence that a dacoity has occurred attended with murder, torture, wounding, or other aggravating circumstances, to submit for his information and orders a report in the English language containing a brief abstract of the circumstances of the case, and of their own proceedings: and in all such cases they are to continue to send weekly reports of their progress in arresting the offenders and eliciting

information, until the culprits are apprehended, or all immediate hopes of bringing them to justice have passed away. The superintendent of police must be kept fully acquainted with the occurrence of all heinous crimes and offences, particularly dacoities, highway robberies, and affrays, in order to make his office of any utility or assistance towards the suppression of crime; and any want of co-operation with him on the part of a magistrate will be brought to the notice of government.(a) C. O. Sup. Pol. *L. P.* No. 2 of 1839.

Formation of a register of sirdar dacoits and systematic receivers of plundered property.

4122. The court of directors observe that—"with regard to the sirdar dacoits and the receivers of plundered property who systematically follow dacoity as a profession, measures might be taken under the direction of the superintendent of police for keeping a register of the chief persons of either description, as has been done with such success in the thuggee department. Such a register might gradually be formed by preserving and connecting together the information procured with respect to each remarkable dacoity. Information for the same purpose might often be procurable from prisoners either before their trial or while undergoing their sentence. Care should be taken that persons about to be brought to trial for dacoity, or under sentence of imprisonment for that crime, should not have such means of communication with other parties, as may be used in the one case for the corruption or intimidation of witnesses, or in the other case for effecting their escape." The superintendent of police calls the attention of magistrates to the subject, and remarks, that the great danger to be guarded against is the propensity of the prisoners to implicate innocent persons, and to give such information as they think is required though unsupported by facts. C. O. Sup. Pol. *L. P.* No. 13 of 1846.

Caution in regard to dosads.

4123. Gangs of dosads come down the river in boats of about 300 maunds, ostensibly as purchasers of gram, under which they conceal their plunder and implements of dacoity. They have spies in the villages along the banks of the river; and after the perpetration of any dacoity, which is usually in a village not more than 3 miles distant from the river, they quietly drop some distance down the stream, and bring to at or near another village under pretence of procuring gram. Letter of Sup. Pol. *L. P.* February 15, 1848.

Trial.

The evidence of approvers must be received with caution.

4124. The criminal authorities are to be on their guard against the abuse and oppression, to which the systematic and exclusive employment of approvers* for the conviction of persons accused of dacoity is necessarily liable: the testimony of men, by their own acknowledgment stained with the same crimes which they lay to the charge of others, stands always

* *For rule regarding the quali-*

(a) In C. O. No. 8 of 1839 the superintendent of police circulated the following extract from a letter addressed by order of the government of India to the Bengal government, dated May 13, 1839:—"On the character of the reports [the six-monthly reports of the magistrates] the president in Council observes that they appear to be wanting in circumstantiality with respect to the particular crime of dacoity. A variety of offences are often included under this generic name; and therefore it is desirable to have a more detailed account of such instances as occur, than is necessary in the case of other crimes. It is well observed by the commissioner of Moorshedabad, that the fact of the perpetrators being inhabitants of the district in which the offence occurs, or persons coming from a distance, affects to a considerable extent the complexion of the case. The worst of all descriptions of dacoity is that, which is perpetrated by gangs settled in a district and bidding defiance to the police: the next in the scale of enormity is, when such robberies are perpetrated by gangs coming from remote or foreign countries: the last and least aggravated form that this crime assumes is, when it is committed by parties casually united under the influence of some sudden temptation or the pressure of accidental calamity."

fied pardon offered to dacoit-approvers, see para. 435.

in need of some corroborative evidence; and if it be received with favor or without distrust, may from vindictive or selfish motives, or even from mere wantonness, be turned equally against the innocent and the guilty. C. O. No. 195 of vol. 3.

When the evidence of approvers is relied on, it should be shown that there was no collusion.

4125. The concurring evidence of approvers, taken under circumstances which preclude mutual consent or any external suggestion by which their statements could be influenced, may be very deserving of belief, where those statements are confirmed as to all particulars by a reference to facts by which it is possible to test them. But then it ought to be very carefully ascertained that the evidence, relied on in any particular case, has been really obtained under the safeguard of those necessary conditions. It is proper to summon on the trial competent witnesses for the purpose of affording formal and satisfactory proof, that the statements of the approvers were, from the first, taken under circumstances which would render collusion impracticable. N. A. R. vol. 6, page 292.

Punishment does not depend on the amount, value, or description of the property plundered; and is not barred by the peculiar distinctions of Mahomedan law.

4126. In such cases of robbery by open violence, the punishment of the offenders is not to depend upon the amount, value, or description of the property plundered. Nor are any of the circumstances noted in the preamble to this regulation,(*a*) as barring a sentence of hudd under the Mahomedan law in cases of highway robbery, nor any other provision in that law, to be hereafter allowed to operate against the punishment of persons convicted of highway robbery, or of any robbery by open violence, as defined in the preceding clause of this section; or of murder, or other acts of criminality committed in the prosecution of

(*a*) The following is that part of the preamble referred to:—"It is further requisite to define the crime and punishment of robbery by open violence, under the continued prevalence of this atrocious crime; which is frequently attended with murder, or with maiming or other personal injury; as well as with the crime of arson or wilful burning of houses, and other aggravating circumstances; and for the punishment of which the specific provisions of the Mahomedan law, under the distinctions admitted to except offenders from the stated penalties, as well as from a distinction in the received construction of that law between highway robbery at a distance from any inhabited place, and robberies not committed on or near the highways, or committed in or near any place inhabited, have been found altogether inadequate. In the case of murder committed by one or more robbers on the highway (*katta-ut-tarik*) at a distance from any inhabited place, the whole of the principals and accomplices are subject by the Mahomedan law (under its specific provision of hudd, or stated punishment by the right of God; being, in other words, exemplary punishment inflicted for the prevention of crimes, which is the end of public justice) to a sentence of death. The same punishment in this instance is inflicted on the whole band, in consideration of each of them being aiding and abetting to the others; and this principle, as allowed by some of the Mahomedan lawyers, is obviously applicable to all murders and other crimes committed by open violence, and by a number of persons assisting and supporting each other; whether on the highway, remote from, or near to, an inhabited place; or within a place inhabited, or in any other place whatever. But, according to the prevailing doctrines, this provision of the Mahomedan law, as well as the provisions it contains for the punishment of highway robbery without murder, by amputation of two limbs, cannot be applied to murders, or robberies committed in any other place than on or near the highway at a distance from any place inhabited; and even with respect to these it is held, that the specific punishment is barred by any one of the band of robbers being under age, or a lunatic, or a relation within the prohibited degrees of the person robbed or murdered; or by the person robbed or murdered not being a fixed resident under the permanent protection of the Mussulman government; or, with respect to robberies, by one of the robbers having a joint interest in the property plundered, or such property not being considered in legal custody with respect to any one of the robbers; or lastly, with regard to the separate punishment of each robber, if his share of the property taken shall not amount in value to ten dirms, being, according to the received calculation of the dirm, somewhat less than three sicca rupees. These distinctions are evidently repugnant to the principles of public and equal justice; and it is highly requisite that provision be made for the more certain and adequate punishment of the heinous crimes of murder and robbery; as well as of robbery, with or without any other acts of aggravated criminality, wheresoever the same may be committed."

such robbery; or of an intent to rob; provided, as in all other cases of criminal conviction and punishment, that the party convicted be adult, and of sound understanding, so as to render him a proper object of punishment. Reg. LIII. 1803, sect. 3, cl. 2.

Persons belonging to gang of dacoits, how punishable.

4127. Whosoever is proved to have belonged, either before or after the passing of this Act, to any gang of dacoits, either within or without the territories of the East India Company, is to be punished with transportation for life, or with imprisonment for any less term, with hard labor. Act XXIV. 1843, sect 1.

This provision applies to all dacoits.

4128. The meaning of the term gang of dacoits is not to be restricted to associated hereditary fraternities, or to particular tribes or families, as might appear from the preamble. There is nothing restrictive or obscure in the language of section 1. A gang of dacoits is simply any party of persons associated for the purpose of committing a dacoity, and to have belonged to a gang of dacoits is said of any one who has at any time, even once, associated himself with such party. Reports *L. P.* vol. 2, part 2, page 613.

Such charge to be always entered in calendar.

4129. Whenever there may be reason to believe that a prisoner, charged with the crime of dacoity belongs, or has belonged, to a gang of dacoits, such as is referred to in Act XXIV. 1843, a count to that effect is to be entered in the indictment in addition to the specific charge of dacoity. C. O. No. 38 of vol. 4.

But specific act of dacoity must be laid and proved.

4130. But it is not sufficient to adduce evidence to prove that the prisoner was concerned in a specific dacoity, in order to substantiate a charge of having belonged to a gang of dacoits. The charge must contain a specific act of dacoity, on which his guilt and his connection with a particular gang will be proved. Reports *L. P.* 1856, part 1, page 692.

Persons accused of dacoity, or of belonging to a gang, or receiving plundered property, may be committed by any magistrate, and tried by any court;

4131. Any person accused of the offence of dacoity with or without murder, or of having belonged to a gang of dacoits, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by dacoity, may be committed by any magistrate within the territories of the East India Company, and may be tried by any court which would have been competent to try him if his offence had been committed within the zillah where that court sits. Act XXIV. 1843, sect. 2.

but not for specific dacoity beyond the British territory.

4132. The above provision does not empower the courts to try prisoners for specific acts of dacoity committed beyond the Company's territories, without having first obtained the authority of government. Const. No. 1213.

Futwa not required in trials for dacoity;

4133. No court is, on trial of the offences specified in this Act [*i. e.* in section 2, *supra*] to require any futwa from any law officer. Act XXIV. 1843, sect. 3.—This refers to all cases of dacoity. C. O. No. 171 of vol. 3 *L. P.* Even when the dacoity has been attended with murder. Reports *L. P.* 1854, part 1, page 541.

but in trials for going forth with a gang to commit robbery, the futwa of the law officer, or the verdict of a jury or assessors, cannot be dispensed with.

4134. But on the trial of a prisoner charged with going forth for the purpose of committing dacoity, the futwa of a law officer, or in lieu of it the verdict of a jury or assessors, cannot be dispensed with under sect. 3, Act XXIV. 1843, as the offence is not one of those described in sect. 2 of that Act. For, although parties proved guilty of assembling and going forth to commit dacoity must necessarily be considered as belonging to a

gang of dacoits, yet such an act would be regarded as inferential evidence in support of a charge of having belonged to a gang of dacoits, rather than as constituting *per se* the latter offence; and, adhering to the rule of literal interpretation applicable to penal law, those cases only are considered amenable to the provisions of the Act in question, in which one or other of the charges is made out in terms corresponding with the terms used therein. N. A. R. vol. 6, page 52. Reports *L. P.* 1855, part 1, page 469.

Penalties.

Principals and accessaries in robbery attended with murder to be sentenced to death.

4135. All persons convicted of being the heads or leaders of a gang of robbers, by whom a murder has been committed, or of having been actively concerned in the perpetration of such murder, or of any murder committed in the prosecution of robbery, or an intent to rob; or of having been present aiding and abetting, when such murder was committed; or, though not present, of having procured and caused by hire, counsel, or command, the perpetration of such murder in pursuance of a preconcerted plan to commit the same, or to commit robbery, are to be adjudged to suffer death. Reg. LIII. 1803, sect. 4, cl. 1.

This does not apply to the case of one of the robbers being killed.

4136. The circumstance of one of the robbers being killed in the prosecution of the dacoity, is not considered any ground for an aggravation of punishment: the blood of the robber, in such cases, is deemed by the Mahomedan law unprotected; and the shedding it in consequence not to incur any legal penalty. N. A. R. vol. 1, page 20, note.

Principals and accessaries in robbery attended with personal injury not occasioning death, or with arson, or other aggravating act, are to be sentenced to transportation for life.

4137. All persons convicted of being the heads or leaders of a gang of robbers, by whom any person has been wounded, maimed, burnt, or subjected to other personal injury, torture, or cruelty, not occasioning homicide; or by whom a dwelling house or houses have been set on fire, or any other criminal and aggravating act committed in the prosecution of a robbery, or intent to rob (as well as persons convicted of having been actively concerned in any of the acts aforesaid, done in prosecution of a robbery, or intent to rob); or of having been present aiding and abetting when any such acts were committed; or, though not present, of having procured and caused by hire, counsel, or command, the perpetration of any such acts in pursuance of a preconcerted plan to commit the same, or to commit robbery, are to be adjudged to suffer imprisonment and transportation for life. Moreover any leaders of gangs, or other heinous offenders, convicted of a repetition of the crime described in this clause; or, without such repetition, of a degree of cruelty, violence, or other aggravating criminality, which, under the discretion allowed by the Mahomedan law in cases of seasut, may be punishable with death, and which appears to the nizamut adawlut to render such heinous offenders deserving of capital punishment; are liable to a sentence of death. Reg. LIII. 1803, sect. 4, cl. 2.

In the case of leaders of gangs, or heinous offenders repeating the crime, or in very aggravated cases, the nizamut adawlut may pass sentence of death.

Corporal punishment may be adjudged in addition to imprisonment: and therefore additional imprisonment in lieu thereof.

4138. In all cases of conviction of the crime of robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803, whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstantial evidence, and the party so convicted is not sentenced to suffer death, the sessions court before whom the prisoner is convicted, and the nizamut adawlut in trials referred to that court, are competent to adjudge corporal punishment in addition to the penalties of imprisonment and transportation for life, or of imprisonment and hard labor for

the period of 14 years, whenever in consideration of the nature of the case, it appears proper to inflict such additional exemplary punishment.(*a*) Reg. III. 1805, sect. 2.

In cases attended with murder, or attempt to commit murder, or corporal injury endangering life, or other aggravation, if the prisoner is not liable to a sentence of death, the judge is to pass sentence of transportation for life, and to refer the trial to the nizamut adawlut, who are to pass the final sentence.

4139. In all cases in which a person appears to the session judge to be duly convicted (whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence) of being concerned, as a principal or an accomplice, in the crime of robbery by open violence, as defined in sect. 3, Reg. LIII. 1803, or of an attempt to commit the same;—if the robbery has been accompanied with murder, or with an attempt to commit murder; or has been accompanied with wounding, or other corporal injury to any person or persons in such a degree as to endanger life; or has been attended with any other aggravating act of criminality;—if the prisoner is not under the regulations in force liable to a sentence of death, the session judge is to pass sentence of imprisonment and transportation for life. But all such trials are to be referred to the nizamut adawlut in the manner prescribed by the existing regulations; and such sentence is not to be deemed final, nor is any warrant to be issued for carrying the same into execution, until it is confirmed by the nizamut adawlut: and if the session judge is of opinion that there are grounds for a mitigation or remission of punishment, he is to state the same in his letter of reference. The nizamut adawlut is to confirm such sentence of imprisonment and transportation for life; unless, from any extenuating circumstances appearing on the trial, the stated punishment appears too severe, in which case that court is authorized to grant such remission or mitigation of punishment as appears just and proper.*(*b*) Reg. VIII. 1808, sects. 3 and 4. Reg XVII. 1817, sect. 8, cl. 3. Reg. XVI. 1825, sect. 2.

* *v. para.* 1457.

(*a*) The abolition of corporal punishment by Reg. II. 1834, of course renders this provision nugatory in cases in which a sentence of imprisonment for life is passed; but where the sentence is of imprisonment for 14 years, the courts may adjudge additional imprisonment for 2 years in lieu of stripes. See para. 1329.

(*b*) As this paragraph is composed of provisions taken from several successive regulations, which have modified those preceding them, and as the language has been somewhat inverted, it seems proper to subjoin those provisions separately as in the original: viz.,

"All persons convicted of being concerned, as principals or accomplices, subsequently to the promulgation of this regulation, in the crime of robbery by open violence, as defined in sect. 3, Reg. LIII. 1803, and who may not under the regulations in force be liable to a sentence of death, shall be adjudged by the courts of circuit and by the court of nizamut adawlut to receive 39 lashes with a corah, and to be imprisoned and transported for life; unless, from any extenuating circumstances appearing on the trial, the stated punishment shall appear too severe; in which case the court of nizamut adawlut is authorized to mitigate the sentence, as in other cases left to the discretion of that court by cl. 5, sect. 4, Reg. LIII. 1803, or to act in pursuance of cl. 6 of that section, if the prisoner appear a proper object of mercy and pardon." *Reg. VIII.* 1808, *sect.* 3. "The courts of circuit shall refer to the court of nizamut adawlut, in the manner prescribed by the existing regulations, the trials of all prisoners convicted of the crime of robbery by open violence, and liable to the punishment declared in the preceding section. The judge of circuit, before whom the trial may be held, shall, in all cases, pass sentence for the stated punishment, if the prisoner appear to him, and to the law officer of the court of circuit, to be duly convicted, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence. But such sentence shall not be deemed final, nor shall any warrant be issued for carrying the same into execution, until it be confirmed by the court of nizamut adawlut. And if the judge of circuit be of opinion, that there are grounds for a mitigation or remission of punishment, he shall state the same in his letter to accompany the trial, as required by cl. 3, sect. 6, Reg. LIII. 1803." *Reg. VIII.* 1808, *sect.* 4.—"Persons convicted of robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803, when accompanied with wounding or other corporal injury not occasioning homicide, and likewise when not so accompanied, under the provisions for such cases in Regs. LIII. 1803; III. 1805, and

The nizamut adawlut in such cases, and the session judge if the case is not referrible, may mitigate the prescribed sentence.

4140. Provided with respect to all the crimes, and degrees of punishment, specified in this section, that if, from any extenuating circumstances, which appear on the trial before the sessions court, or nizamut adawlut, the stated punishment in any particular instance appears too severe; or if, on consideration of the number of prisoners convicted of the same crime, and of any discriminative circumstances with respect to one or more of them, the example appears sufficient for the ends of justice, without extending the full degree of the prescribed punishment to the whole of the prisoners convicted, it is competent to the nizamut adawlut, or to the session judge if the trial is not referrible under the regulations to the nizamut adawlut, to mitigate the sentence in such cases as is deemed just and expedient. Reg. LIII. 1803, sect. 4, cl. 5.

Punishment to be adjudged by the session judge in unaggravated cases.

4141. In cases of conviction before a sessions court of the crime of robbery by open violence, as defined in sect. 3, Reg. LIII. 1803, or of an attempt to commit the same, if the robbery has not been accompanied with murder, or with an attempt to commit murder, whether by wounding, burning, strangling, poisoning, drowning, throwing into a well or by any other means, nor has been accompanied with wounding, burning, or other corporal injury to any person or persons in such a degree as to endanger life, nor has been attended with any other aggravating act of criminality, such as appears to the session judge, before whom the trial is held, to merit and call for a more severe punishment than stripes and imprisonment with hard labor for 14 years in banishment from the district where the prisoner has resided, the session judge is authorized and directed, without reference to the nizamut adawlut (as required by cl. 6, sect. 8, Reg. XVII. 1817), to pass such sentence as he deems adequate to the offence on due consideration of all the circumstances of the case, not exceeding the stripes [now commutable to 2 years' additional imprisonment] and term of imprisonment, with hard labor in banishment, above specified.(a) Reg. XVI. 1825, sect. 3, cl. 1.

Going forth with a gang to commit robbery; sentence imprisonment for 7 years;

* *The rule in para.* 4140 *for mitigating the punishment applies to these cases.*

4142. Persons convicted of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such, or have made any violent attempt for the purpose, so as to bring them within the above provisions, are to be adjudged to suffer imprisonment and hard labor* for such period, not exceeding 7 years, as the circumstances of the case appear to merit. Reg. LIII. 1803, sect 4, cl. 4.

VIII. 1808, are liable, by sentence of the nizamut adawlut, to receive 39 lashes with a corah, and to be imprisoned and transported for life." "Nothing in the above clause shall be construed to empower the courts of circuit to pass and order execution of a final sentence of conviction and punishment without reference to the nizamut adawlut, in any case of robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803." *Reg. XVII. 1817, sect. 8, cls. 3 and 6.* "So much of sect. 8, Reg. XVII. 1817, and of the preceding regulations therein referred to, or of any other regulation in force, as requires that the courts of circuit shall in all cases of conviction of the crime of robbery by open violence as defined in cl. 1, sect. 3, Reg. LIII. 1803, refer the trial of the prisoner or prisoners so convicted for the final sentence of the court of nizamut adawlut, is hereby modified, as stated in the following section" (for which see the text, para. 4141). *Reg. XVI. 1825, sect. 2.*

(a) It was at the same time provided that in all cases in which the robbery was committed by a gang of three or more armed robbers, whether armed with any species of fire-arms, or with spears, swords, clubs, or other weapons, the court of circuit should not be competent to pass sentence on conviction for a less punishment than 14 years' imprisonment in banishment, without referring the trial to the nizamut adawlut. But this has been wholly rescinded by Reg. I. 1831.

and two years in lieu of stripes;

4143. Persons convicted of the crime provided for by the above provision, are further declared liable to corporal punishment [now commutable to 2 years' additional imprisonment] in addition to the whole of the imprisonment provided for thereby, whenever it appears expedient, for the sake of example, to the sessions court before whom they are convicted, or to the nizamut adawlut in any cases referred to that court. Reg. III. 1805, sect. 3.

and to give security for future good conduct.

4144. Persons convicted of going forth with a gang of robbers for the purpose of committing robbery, but apprehended before they have committed such robbery, or made any violent attempt for the purpose, and adjudged to suffer temporary imprisonment under the above provisions, are previously to their release from confinement to be required to give substantial security for their future good conduct. In such cases, as well as in all instances wherein persons required to give security under cl. 6, sect. 2, Reg. LIII. 1803,* of any other provision in the regulations, are notorious robbers (dacoits) whom it would be dangerous to set at liberty without substantial security for their future good conduct, the prisoner is not to be released until such security be given, to the satisfaction of the sessions court upon the report of the magistrate, unless from the prisoner's behaviour during his confinement, or other circumstances, there appear to be sufficient ground of assurance to warrant his discharge on a muchalka, under the provision made for that purpose by sect. 11, Reg. LIII. 1803.† Reg. VIII. 1808, sect. 9.

Rule for release of dacoits required to give security.

* *v. paras.* 1313 *and* 3571 *et seq.*

† *v. paras.* 3598 *et seq.*

Attempt to commit is not to be charged as a going forth to commit.

4145. When the prisoners attacked the house of the prosecutor and broke into it; but, before they could fully effect their purpose, the inmates were aroused, and attacking the robbers drove them off, wounds having been inflicted on both sides; and the session judge convicted them of going forth with a gang of robbers for the purpose of committing robbery, the court held that they ought to have been charged with and convicted of dacoity attended with wounding. Reports *L. P.* 1852, part 2, page 137.

If a village watchman or guard, or a police officer, of whatever description, is convicted of robbery with open violence, whether as principal or accomplice, the sentence which would have been passed on any other person may be enhanced in his case to death or transportation for life according to the circumstances of the case.

4146. If any paik, chokeedar, pasban, dosad, nigaban, or other village watchman, or guard, of whatever denomination, entertained or employed by a landholder, or by any other person, for the protection of villages, houses, persons, or property, and consequently required by the regulations to assist the police officers in preventing robbery and other crimes, and in apprehending offenders; or if any police officers of whatever description (whether a police darogah, or tuhseeldar entrusted with the charge of the police, a city or town kotwal, or a jemadar, mohurir, burkundaz, peada, or other person employed under the magistrates, the police darogahs, and tuhseeldars, or under any other officers of police, for the protection of the inhabitants of the country and their property from robbery; or for apprehending robbers and other criminals; or generally for the performance of any duty of police, connected with the prevention of public offences);—is convicted of the crime of robbery by open violence as defined in cl. 1, sect. 3, Reg. LIII. 1803; whether such conviction be founded upon the free and voluntary confession of the prisoner, or upon the testimony of credible witnesses, or upon strong circumstantial evidence; and the party so convicted is not liable to suffer death under cl. 1, sect. 4, Reg. LIII. 1803, as an accomplice in murder as well as robbery; he is to be held and expressly deemed to be

within the provisions contained in cls. 2 and 3 of that section,(a) whereby the nizamut adawlut are authorized to pass sentence of death in cases of aggravated criminality which appear to deserve it, although the robbery has not been attended with actual homicide; or, where the robbery has been without any personal injury or other act of aggravation, to extend the sentence of that court from imprisonment and hard labor for fourteen years to imprisonment and transportation for life, if on consideration of any circumstance appearing upon the trial to aggravate the guilt of any particular prisoner, the infliction of such more severe punishment appears just and necessary. Under this declaration any watchman, guard, or police officer, as described in the present section, who is convicted of having been present, aiding and abetting, at a robbery by open violence, or at an attempt to commit such robbery; or though not present of having procured and caused by hire, counsel, or command, the perpetration of such robbery, or attempt to rob; is liable to suffer death, on the sentence of the nizamut adawlut, according to the regulations, if in the prosecution of such robbery, or attempt to rob, any person has been murdered, wounded, maimed, burnt, or subjected to other personal injury, torture, or cruelty, or any dwelling house has been set on fire, or other criminal and aggravating act committed; or is liable to a sentence of imprisonment and transportation for life by the nizamut adawlut, if the prosecution of such robbery or attempt to rob has not been attended with homicide, personal injury, or any of the other aggravating acts above specified. It is further declared that any clear and direct connivance on the part of a watchman, guard, or police officer, as described in this section, whereby a gang of robbers have been enabled to commit any of the crimes above stated, is, if duly established, to subject the offender to the same penalty, as he would have been liable to if actually present, aiding and abetting; or, though not present, if he had procured and caused the perpetration of the offence by hire, counsel, or command. Reg. III. 1805, sect. 4.

Connivance on the part of such officer, subjects him to the same penalty as an accomplice.

But such trial need not be referred, if the judge considers a less severe sentence sufficient.

4147. But the above provision is modified by sect. 2, Reg. XVI. 1825; and the trial of a chokeedar convicted of dacoity is not necessarily referrible to the nizamut adawlut. The session judge should himself pass sentence, unless he considers the prisoner deserving of a more severe punishment than stripes and 14 years' imprisonment in banishment. N. A. R. vol. 5, page 68.

Punishment of such officer going forth with a gang to commit robbery.

4148. If any watchman, guard, or police officer as described in the preceding section, is convicted of going forth with a gang of robbers for the purpose of committing robbery, or of conniving at the going forth of a gang of robbers for such purpose, but he, or they, are apprehended before they have committed robbery, or made any violent attempt for the purpose; the watchman, guard, or police officer, so convicted, is liable to corporal punishment [now commutable to two years' additional imprisonment] and imprisonment with hard labor for such period, not exceeding 14 years, as the circumstances of the case, in the judgment of the session judge before whom he is convicted, appear to merit; or if the session judge in any particular case deems the prisoner deserving of more exemplary

(a) Cl. 3 was rescinded by sect. 2, Reg. VIII. 1808; and the provisions of para. 4189 have been enacted in its stead.

punishment, he is to refer the trial to the nizamut adawlut, who are authorized, if sufficient ground appear, to extend the sentence to imprisonment with transportation for life. Reg. III. 1805, sect. 5.

Pardon, or mitigation of sentence.

4149. The sessions courts are to report to the nizamut adawlut, and that court, if it appears necessary, are to report to government, the case of any prisoner or prisoners, who appear proper objects of mercy and pardon; or, if the punishment to which they are sentenced has not been adjudged under any provision of the Mahomedan law, or the regulations, expressly requiring the same, the nizamut adawlut, as already authorized, may remit the punishment, and order the discharge of the prisoner, without reporting the case for the orders of government. [See also the power of mitigation and pardon vested in the nizamut adawlut, paras. 1457 *et seq.*] Reg. LIII. 1803, sect. 4, cl. 6.

Precedents.

Dacoity attended with murder: sentence of death or transportation for life.

4150. On conviction of dacoity attended with murder, the prisoners have generally been sentenced to death, whether those by whom the murder was actually committed, or those present aiding and abetting; *N. A. R. vol.* 1, *pages* 3, 8, 14, 18, 25, 28, 30, 36, 40, 42, 44, 45, 48, 51, 66, 130, 140, 146, 186, 198 *and* 245. Where eleven prisoners were charged with the commission of repeated gang robberies, five of them concerned in cases attended with murder were sentenced to death; four (one of whom was a woman) engaged in several cases, of which one was accompanied with torture and beating, were sentenced to transportation for life; and the others, convicted of robbery, were sentenced to stripes and imprisonment in banishment for 14 years; *N. A. R. vol.* 1, *page* 36. Where the leaders of the gang have been sentenced capitally, the accomplices have been sentenced to transportation or imprisonment for life, or to imprisonment in banishment for 14 years; *N. A. R. vol.* 1, *page* 154; *vol.* 4, *pages* 313 *and* 338; *and vol.* 5, *page* 11. Where the principals were sentenced to death, the accomplices who did not appear to have taken any part in the murder were sentenced to transportation for life; *N. A. R. vol.* 1, *pages* 12 *and* 29:—so, where a prisoner confessed to having been engaged in a dacoity attended with murder, but there was no reason to believe that he had been immediately concerned in the murder, he was sentenced to transportation for life; *N. A. R. vol.* 1, *page* 98. Where the five principals were sentenced to death, two others who confessed that they formed part of the gang, but alleged that they remained in the boats while the others went to commit the robbery, and there was no other evidence against them, were sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 1, *page* 10. In the case of a robbery by open violence committed by a hill-tribe of Le Mro, in Arracan, upon a village recently located near them, in which fourteen persons were murdered, nine others severely wounded, and five carried into captivity (of whom three were recovered, one died a natural death, and one was supposed to have been sold); and the prisoners offered no extenuating plea; the three chiefs and leaders were sentenced capitally, and the rest to imprisonment in banishment for 14 years; but they were all pardoned by government, at the court's recommendation, in consideration of their having been induced to give themselves up by a promise (though unauthorized) of impunity; *N. A. R. vol.* 5, *page* 31.—From the more recent cases reported, it seems to be the rule that those only of the prisoners who are proved to have been the leaders of the gang, or to have taken a more active part in the

Peculiar case.

The leaders only, or those who have taken the more active part in the murder, are usually sentenced to death;

actual murder, should be sentenced to death: thus, where no one of the prisoners was proved to have been the leader, or to have been the actual murderer, or to have been more guilty than the others, all who were present aiding and abetting in the dacoity were sentenced alike to imprisonment for life in Alipore jail, or to transportation for life; and an accessary after the fact to imprisonment for 7 years; *N. A. R. vol.* 3, *pages* 76 *and* 295; *vol.* 5, *pages* 38 *and* 153. In a peculiar case, tried by the commissioner for the North-Eastern parts of Rungpore with the aid of assessors, four prisoners were sentenced to imprisonment in banishment for life, and four, whom the assessors, from their previous knowledge of the characters of the parties, considered most likely to have been led away by the others, were sentenced to imprisonment in banishment for 14 years; *N. A. R. vol.* 3, *page* 246. In one case, the two prisoners clearly shown to have been the leaders were sentenced to stripes and imprisonment for life in Alipore jail; and of the others, thirty were sentenced to stripes and imprisonment in banishment for 14 years, four to stripes and imprisonment for 7 years, and three in consideration of their extreme youth (not having attained the age of 15) to stripes alone; *N. A. R. vol.* 4, *page* 179. Where the prisoner was apprehended after having eluded pursuit for 26 years, and convicted of having been an accomplice, he was sentenced to imprisonment for life in Alipore jail; *N. A. R. vol.* 4, *page* 12. In a case of river-dacoity, where a man was presumed to have been drowned in endeavouring to escape from the dacoits, the prisoners were sentenced to stripes and transportation for life; *N. A. R. vol.* 1, *page* 204. Where a prisoner, convicted of being an accomplice in a dacoity attended with murder, was sentenced to death; a second, convicted of being an accessary before the fact, was sentenced to 14 years' imprisonment; a third, convicted of privity after the fact and receiving and secreting part of the plundered property, to imprisonment for 14 years; and a fourth, convicted of privity after the fact, to imprisonment for 7 years; *N. A. R. vol.* 3, *page* 355.

and less severe sentences have been passed in some cases.

Case in which the prisoner eluded pursuit for 26 years.

Case attended with accidental death.

Accessaries before and after the fact.

Cases of budhucks, or shaghalkhors;

4151. The prisoners, of the *shaghalkhor* or *budhuck* caste, issuing from their haunts in the Oude territory, assumed the disguise of a raja and his retinue proceeding on a pilgrimage, entered the Company's territory, attacked a boat laden with treasure in the Behar district, and carried off the treasure, killing and wounding ten men. Having made good their retreat, they were proceeding the following year on a similar expedition, when they were apprehended. Mirhban Sing, the leader, was sentenced to death; 28, convicted of being accomplices, to stripes and transportation for life; 4, of privity and connivance in the said robbery and of being professed dacoits to stripes and imprisonment in banishment for 14 years, and then to find security for good behaviour; 76, of going forth to commit robbery and of being professed dacoits, to imprisonment in banishment for 7 years and then to furnish security; and 15, of going forth to commit robbery, to be imprisoned in banishment for 7 years; *N. A. R. vol.* 2, *page* 125.(*a*) Sixteen prisoners, convicted on

and sial-marua dacoits.

(*a*) In calling for a return of dacoities supposed to have been perpetrated by budhucks or other gangs from the Oude territories, the superintendent of police observed, that those cases may be generally supposed to have been perpetrated by professional robbers from Oude, in which "the attack has been made by a body of armed men early in the evening, cutting down all who opposed them, plundering only cash or jewels easily portable, and dispersing immediately afterwards, leaving no trace by which to follow them, as after the perpetration of a dacoity under such circumstances the gang will move from 30 to 50 miles before morning." See his C. O. No. 9 of 1840.

their own confessions of being *sial-marua* dacoits, and of having been concerned severally in one or more of eight separate cases of dacoity, three of which were attended with murder and wounding and four with wounding, were sentenced to transportation for life; capital punishment was remitted, because one of the judges, not being satisfied of the truth of their confessions to the specific dacoities charged, would have acquitted them; *N. A. R. vol.* 3, *page* 313.

Case of murder committed in prosecution of attempt to commit gang-robbery.

4152. A prisoner convicted solely on his own confession of having gone forth armed in a gang with the criminal intent of robbing, and of having been present when, in the prosecution of this intent, the watchman of an orchard which they were robbing was killed, was sentenced, as he did not appear to have been actively concerned in the murder, to imprisonment for life: it is added in a note to the report, that "the prisoner was not one of those professed robbers, against whom the severe penalties of Reg. LIII. 1803 were particularly directed." *N. A. R. vol.* 1, *page* 316.

Dacoity attended with wounding or other personal violence.

4153. On conviction of dacoity attended with wounding, burning, beating, or other personal violence, the most usual sentence has been for transportation for life; *N. A. R. vol.* 1, *page* 45; *vol.* 2, *pages* 142, 166, *and* 185: and stripes have sometimes been added: *N. A. R. vol.* 2, *page* 10, *and vol.* 3, *page* 208. Where one prisoner was convicted of being concerned in a robbery by open violence attended with wounding, and the others of knowingly receiving property obtained thereby, the former was sentenced to stripes and transportation for life, and the latter to stripes and imprisonment for 14 years; the wives of two of the prisoners though convicted of receiving the plundered property were discharged on muchalkas as they appeared to have acted under the control of their husbands; and another woman, also convicted of receiving, was released on the same terms in consideration of her old age and helplessness; *N. A. R. vol.* 1, *page* 353. Where the dacoits secretly entered the house, and afterwards on discovery had recourse to personal violence, they were sentenced in one case to stripes and 14 years' imprisonment in Alipore jail, and in another case to imprisonment for 14 years. *N. A. R. vol.* 2, *page* 217; *and vol.* 3. *page* 271.

Cases of wives receiving property plundered by their husbands.

Personal violence after secret entry.

Unaggravated dacoity.

4154. In unaggravated cases, the prisoners have been sentenced—to stripes and transportation for life; *N. A. R. vol.* 2, *page* 40;—to stripes and imprisonment for life; *N. A. R. vol.* 1, *page* 304;—the leader to transportation for life, and the others to imprisonment in banishment for 14 years; *N. A. R. vol.* 1, *page* 20;—to stripes and imprisonment for 14 years; *N. A. R. vol.* 1, *page* 238. A prisoner convicted of dacoity on the river unattended with any aggravating circumstances, was sentenced to stripes and transportation for life, in consideration of his being a chokeedar and his having previously stolen the boat in which he went to commit the dacoity; *N. A. R. vol.* 2, *page* 150. Where an accomplice was sentenced to imprisonment for 14 years, another prisoner convicted of privity was sentenced to 7 years' imprisonment; *N. A. R. vol.* 4, *page* 71.

Case of a chokeedar.

Privity.

Acquittals from insufficient evidence in cases of dacoity.

4155. Where the direct evidence to the recognition of the prisoners at the time of the robbery was unsupported by circumstantial evidence, the prisoners were acquitted; *N. A. R. vol.* 1, *page* 178; *vol.* 2, *page* 165; *and vol.* 4, *page* 282. The evidence of an

approver, and the admission of three convicted accomplices, was held insufficient legal proof for conviction; *N. A. R. vol.* 3, *page* 112. So, where the only evidence against the prisoners consisted of their confessions, which appeared open to suspicion of having been improperly obtained in the first instance, the prisoners were released; *N. A. R. vol.* 1, *page* 273; *vol.* 3, *page* 274; *and vol.* 4, *page* 269. So, where the confessions of the prisoners were not taken down in the presence of the magistrate, and the evidence was otherwise insufficient, the prisoners were acquitted notwithstanding a futwa of conviction; *N. A. R. vol.* 2, *page* 70. Where the only proof against the prisoners was the discovery of certain property in their houses, which however was not satisfactorily recognized, the prisoners were released; *N. A. R. vol.* 1, *page* 257. So, where the depositions of the prosecutrix at the trial differed from her first statement at the thana in regard to those among the dacoits whom she said that she had recognized at the time; and where also there had been an improper delay in the record of confessions before the police; *N. A. R. vol.* 6, *page* 226.

Highway robbery amounting to robbery by open violence, attended with murder;

4156. In cases of highway robbery amounting to robbery by open violence:—where the robbery was attended with murder, the prisoner was sentenced to death [the report of this case shows that the prisoner went forth with the intent to rob, but does not mention whether he was armed; this however is presumable, as he killed two persons travelling with him, one of whom had a sword]; *N. A. R. vol.* 1, *page* 211:—where the robbery was attended with beating from which the death of one person ensued, the prisoners were sentenced to transportation for life; *N. A. R. vol.* 5, *page* 80:—where there was wounding with intent to murder, the sentence was imprisonment for 14 years; in this case the session judge passed sentence without reference, but the court held that the disposal of the case was beyond his competence; *N. A. R. vol.* 5, *page* 152.—Where the prisoners in a large gang committed several highway robberies in the most daring manner, and resisted and severely wounded the kotwal and burkundazes sent to apprehend them, the instigators were sentenced to stripes and transportation for life, and the others to stripes and imprisonment for 14 years; *N. A. R. vol.* 1, *page* 347.—Where the magistrate committed the prisoners on a charge of highway robbery and wounding, and the session judge, after hearing the evidence in attestation of the mofussil confessions, and after the prisoners had pleaded to the above charge, returned the calendar to the magistrate to insert the words "intent to murder" after the word wounding; the prisoners were convicted by the court of the lesser charge only and sentenced to imprisonment for 14 years; *N. A. R. vol.* 6, *page* 7;—in a case of highway robbery attended with wounding, the sentence was mitigated to imprisonment for 14 years in consequence of the youth of the prisoner, and as this was his first offence; *N. A. R. vol.* 2, *page* 1:—in another case of the same nature two prisoners were sentenced to transportation for life, two to imprisonment for 14 years, and two convicted of privity to the robbery to imprisonment for 7 years; *N. A. R. vol.* 2, *page* 121.

with attempt to murder,

with wounding;

with beating,

Where the prisoners were convicted of highway robbery attended with beating; the sentence was mitigated in one case, as it appeared to be the first offence committed by the prisoners, and as the prosecutor sustained no very serious injury, to stripes and imprisonment for 14 years; *N. A. R. vol.* 2, *page* 97: in another case, where the prosecutor was

very slightly hurt, and under all the circumstances, the sentence was mitigated to imprisonment for 8 years; *N. A. R. vol.* 3, *page* 64: and in another case, as the prisoners were not old offenders, and were in a state of intoxication when the offence was committed, a mitigated sentence was passed of stripes and imprisonment for 7 years; *N. A. R. vol.* 2, *page* 24. In a case of highway robbery on horseback (*kazakee*), where the prisoner "had long been notorious, as being one of that daring description of robbers denominated kozaks, whose depredations are usually committed in the face of day, and who, relying on their expertness in eluding the pursuit of justice, rarely take the precaution to disguise their persons, or to conceal their mode of life, and in consequence are more frequently recognized than any other class of public offenders," he was sentenced to transportation for life; *N. A. R. vol.* 2, *page* 17. Kazakee.

4157. In a case of highway robbery and murder, the prisoners were acquitted from doubt of the evidence of witnesses who swore to having seen the perpetration of the murder by them; *N. A. R. vol.* 3, *page* 276: so, the evidence of a single witness to the recognition of the prisoners as having belonged to the gang of robbers, was held insufficient for the conviction of the prisoners; *N. A. R. vol.* 3, *page* 99. And a voluntary confession of highway robbery was set aside from doubts of its truth excited by the probable motives leading to it; *N. A. R. vol.* 3, *page* 242. Acquittals in cases of highway robbery amounting to robbery by open violence.

NOTE.

In English law larceny has been defined to be "the wrongful or fraudulent taking and carrying away, by one person, of the mere personal goods of another, from any place, with a felonious intent to convert them to his (the taker's) own use, and make them his own property, without the consent of the owner." The taking and carrying away must be felonious, that is, done *animo furandi*; or, as the civil law expresses it, *lucri causâ*: but it is not necessary that the offender should contemplate any thing in the nature of a pecuniary advantage. The rule with regard to the *lucri causâ* is stated by the criminal law commissioners in the following terms: "the ulterior motive by which the taker is influenced in depriving the owner of his property altogether, whether it be to benefit himself or another, or to injure any one by the taking, is immaterial." The commissioners also give the following definition of a felonious taking: the taking and carrying away are felonious, where the goods are taken against the will of the owner, either in his absence, or in a clandestine manner, or where possession is obtained either by force or surprise, or by any trick, device, or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods, and where the taker intends in any such case fraudulently to deprive the owner of his entire interest in the property against his will.—Where goods are once taken with a felonious intent, the offence cannot be purged by a restoration of them to the owner. Thus, the prisoner having robbed the prosecutor of a purse, returned it to him, saying, if you value the purse take it, and give me the contents, but before the prosecutor could do this the prisoner was apprehended; the offence was held to be complete by the first taking.

Proof of the taking—what manual taking is required.] In order to constitute the offence of larceny, there must be an actual taking, or severance of the thing, from the possession of the owner; for as every larceny includes a trespass, if the party be not guilty of a trespass in taking the goods, he cannot be guilty of a felony in carrying them away. Still though there must be a taking, in fact, from the actual or constructive possession of the owner, yet it need not be by the very hand of the party accused. For if he fraudulently procure another, who is himself innocent of any felonious intent, to take the goods for him, it will be the

same as if he had taken them himself; as if one procure an infant, within the age of discretion, to steal the goods for him, or if, by fraud or perjury, he get possession of the goods by legal process without title.—The least removing of the thing taken from the place where it was before, though it is not quite carried off, is a sufficient taking and carrying away to constitute larceny; and upon this ground a guest, who had taken the sheets from his bed with an intent to steal them, and carried them into the hall where he was apprehended, was adjudged guilty of larceny.—So where a person takes a horse in a close, with intent to steal him, and is apprehended before he can get him out of the close.—The prisoner got into a waggon, and taking a parcel of goods which lay in the forepart, had removed it to near the tail of the waggon, when he was apprehended: the twelve judges were unanimously of opinion that, as the prisoner had removed the property from the spot where it was originally placed, with an intent to steal, it was a sufficient *taking* and *carrying away* to constitute the offence.—But where the prisoner had set up a parcel containing linen, which was lying lengthways in a waggon, on one end, for the greater convenience of taking the linen out, and cut the wrapper all the way down for that purpose, but was apprehended before he had taken any thing, all the judges agreed that this was no larceny, although the intention to steal was manifest. For a carrying away, in order to constitute felony, must be a removal of the goods from the place where they were, and the felon must, for the instant at least, have the entire and absolute possession of them.—The following case, though nearly resembling the last is distinguished by the circumstance that every part of the property was removed. The prisoner sitting on a coach-box took hold of the upper part of a bag which was in the front boot, and lifted it up from the bottom of the boot on which it rested: he handed the upper part of the bag to a person who stood beside the wheel, and both holding it endeavoured to pull it out, but were prevented by the guard: the prisoner being found guilty, the judges, on a case reserved, were of opinion that the conviction was right, thinking that there was a complete *asportavit* of the bag.—The prisoner was indicted for robbing the prosecutrix of a diamond ear-ring: it appeared that as she was coming out of the opera house, the prisoner snatched at her ear-ring, and tore it from her ear, which bled, and she was much hurt: the ear-ring fell into her hair, where it was found on her return home: on a case reserved, the judges were of opinion that this was a sufficient taking to constitute robbery; it being in the possession of the prisoner for a moment, separated from the owner's person, was sufficient, though he could not retain it, but probably lost it again the same instant that it was taken.—There must, however, be a possession by the party charged, however temporary. The prisoner stopped the prosecutor as he was carrying a feather bed on his shoulders, and told him to lay it down, or he would shoot him: the prosecutor laid the bed down, but before the prisoner could take it up he was apprehended: the judges were of opinion that the offence was not completed.—There must be a severance of the goods from the possession of the owner. The prisoner took a purse out of the pocket of the owner, but the purse being tied to a bunch of keys and the keys remaining in his pocket, and the party being apprehended while they remained in his pocket, it was held no larceny, on the ground that the owner still remained in possession of his purse, and that there was no *asportavit*. So where goods in a shop were tied to a string, which was fastened to one end of the bottom of the counter, and the prisoner took up the goods and carried them towards the door as far as the string would permit, and was then stopped, Eyre B. ruled that there was no severance, and consequently no felony.

Proof of the felonious intent in the taking—goods obtained by false process of law.] Where the possession of goods is obtained from the owner by means of the fraudulent abuse of legal process, the offence will amount to larceny. Thus it is laid down by Lord Hale, that if A has a design to steal the horse of B and enters a plaint of replevin in the sheriff's court for the horse, and gets him delivered to him and rides him away, this is taking and stealing, because done *in fraudem legis*.

Proof of the felonious intent in the taking —mistake.] The proof that the goods were taken with a felonious intent may be rebutted, by showing that the party charged with the larceny took them by mistake. Thus if the sheep of A stray from his flock into that of B, and the latter by mistake drives them with his

own flock, or shears them, that is not felony; but if he knows the sheep to be another's, and marks them with his own mark, that would be evidence of a felony. So, if he appear desirous of concealing the property, or of preventing the inspection of it by the owner, or by any other who might make the discovery, or, if being asked, he deny the having them, although the knowledge be proved; these likewise are circumstances tending to show the felonious intent.

Proof of the felonious intent in the taking—goods taken by trespass.] Although the party may wrongfully take the goods, yet, unless he intended to assume the property in them, and to convert them to his own use, it will amount to a trespass only, and not to a felony. Thus if A leaves his harrow in the field, and B having land in the same field uses the harrow, and having done so returns it to its place, or informs the owner, this is only a trespass.—In the same manner if A takes away the goods of B, openly before him or other persons, this carries with it evidence only of a trespass.—So of a servant riding his master's horse upon his own business.—The two prisoners were charged with stealing two horses: it appeared that they went in the night to an inn kept by the prosecutor, and took a horse and mare from his stable, and rode about thirty-three miles to a place, where they left them in the care of the ostler, stating that they should return: they were apprehended the same day, about fourteen miles from the place: the jury found the prisoners guilty, but added that they were of opinion they merely meant to ride the horses to this place, and to leave them there; but that they had no intention either of returning them, or making any further use of them: the judges, upon this finding, held it to be a trespass only and no larceny: they said there was no intent in the prisoners to change the property, or to make it their own, but only to use it for a special purpose, that is, to save their labour in travelling: the judges agreed that it was a question for the jury, and that if they had found the prisoners guilty generally upon this evidence the verdict could not have been questioned.—So where, upon an indictment for stealing a horse, two saddles, &c., it appeared that the prisoner got into the prosecutor's stables and took away the horse and the other articles altogether; but that when he had got to some distance he turned the horse loose, and proceeded on foot, and attempted to sell the saddles; Garrow B. left it to the jury to say, whether the prisoner had any intention of stealing the horse; for that if he intended to steal the other articles, and only used the horse as a mode of carrying off the other plunder more conveniently, and, as it were, borrowed the horse for the purpose, he would not in point of law be guilty of larceny.—The prosecutor met the prisoner, whom he knew to be a poacher, and seized him; the prisoner getting free, wrested a gun from the hands of the prosecutor, and ran away with it; it was proved that the next day the prisoner said he would sell the gun, and it was never found; Vaughan B. told the jury, upon the trial of the prisoner for stealing the gun, that he might imagine that the prosecutor would use the gun so as to endanger his life, and if so, his taking it under that impression would not be felony; but if he took it, intending at the time to dispose of it, it would be felony.

Proof of the felonious intent in the taking—goods taken under a fair claim of right.] If there be any fair claim of property or right in the prisoner, or if it be brought into doubt at all, the court will direct an acquittal. Thus where the owner of land takes a horse damage feasant, or a lord seizes it as an estray, though perhaps without title, yet these circumstances explain the intent, and show that it was not felonious; but these facts may be rebutted, as by showing that the horse was marked in order to disguise him.—After a seizure of uncustomed goods, several persons broke, at night, into the house where they were deposited, with intent to retake them for the benefit of the former owner; and it was held that this design rebutted the presumption of a felonious intent.

Proof of the felonious intent in the taking—goods procured by finding.] The law respecting the converting of goods found, to the finder's own use, depends upon the question of felonious intention. "If," says Lord Hale, "A finds the purse of B in the highway, and takes and carries it away, and the case has all the circumstances that prove it to be done *animo furandi*, as denying or secreting it, yet it is not felony."—But, he adds, where a man's goods are in such a place, where ordinarily they are or may be

lawfully placed, and a person takes them *animo furandi*, it is felony, and the pretence of finding must not excuse.—The distinction, therefore appears to be that where the goods are found in such a situation that the owner may be presumed to have abandoned the property in them, the converting of them will not be a larceny; but if, from circumstances, the finder must infer that there has been no such abandonment, it will be felony to convert them without making due inquiry as to the owner. Thus it is said by Lord Hale, that if a man hides a purse of money in his corn-mow, and his servant, finding it, takes part of it—if, by circumstances, it appear that he knew his master laid it there, it is felony; but, then the circumstances must be pregnant, otherwise it may be reasonably interpreted to be a bare finding, being an unusual place for such a *depositum*.—In the following cases, although, in strictness, the goods were acquired by finding, yet the converting of them was held to be larceny. A gentleman left a trunk in a hackney coach, and the coachman taking it converted it to his own use, this was held to be larceny; for the coachman must have known where he took the gentleman up, and where he set him down, and ought to have restored his trunk to him.—In a similar case, where a box had been left in a coach, and was found at the house of a Jew, where the coachman had uncorded it, and taken out several articles, some of which were missing; the coachman being indicted for larceny, the judge directed the jury that, if they thought that the prisoner had detained the box merely in the hope that a reward would be offered for it, and that he meant then to return it to the owner, they ought to acquit him; but if they thought that he had uncorded the box not merely from curiosity, but with an intention to embezzle any part of its contents, and that he had actually taken any of the goods mentioned in the indictment, it would be matter of legal consideration, whether a person so guilty should not be reached as a felon: the jury having found the prisoner guilty, upon a case reserved, the verdict was approved of by the judges.—The prosecutor, having had his hat knocked off in a quarrel with a third person, the prisoner picked it up, and carried it home: being indicted for larceny, Park J. said, "If a person picks up a thing and knows that he can immediately find the owner, but, instead of restoring it to the owner, converts it to his own use, this is felony."—A pocket-book, containing bank-notes was found by the prisoner in the highway, and converted by him to his own use; upon which Lawrence J. observed, that if the party finding property in such manner knows the owner of it, or if there be any mark upon it, by which the owner can be ascertained, and the party, instead of restoring it, converts it to his own use, such converting will constitute a felonious taking.—And in a similar case, Gibbs C. J. stated to the jury that it was the duty of every man, who found the property of another, to use all diligence to find the owner, and not to conceal the property (which was actually stealing it), and appropriate it to his own use.—Where the prisoner having received a bureau for the purpose of repairing it appropriated 900 guineas, which he found in a secret part of it, it was considered felony.—Evidence to show that the finder endeavoured to discover the true owner, and kept the goods till it might be reasonably supposed that he could not be found; or that he made known his acquisition so that he might make himself responsible for the value, in case he should be called upon by the owner, are circumstances to rebut the presumption of a felonious taking and conversion.—The criminal law commissioners say: "the intention of a person taking property by finding will be felonious or not, according as his conduct, in omitting to use due diligence to discover the owner, or in concealing the property, or in other circumstances, shows that, in the taking, he had or had not a design to deprive the owner altogether of his property."—Where a servant, indicted for stealing bank-notes, the property of her master, in his dwelling house, set up in her defence that she found them in the passage, and not knowing to whom they belonged, kept them to see if they were advertised; Park J. held that she ought to have inquired of her master, whether they were his or not, and that not having done so, but having taken them away from the house, she was guilty of larceny.

Proof of the felonious intent in the taking—goods taken by wife—or by wife and a stranger.] If a wife take goods of which the husband is the joint or sole owner, the taking is not larceny, because they are in law but one person, and the wife has a kind of interest in the goods.—Therefore, where the wife of a member of a friendly society, stole money belonging to the society, lodged in a box in her husband's custody

under lock of the stewards of the society, it was held by the judges not to be larceny.—Whether, where a stranger and the wife jointly steal the husband's property, it is larceny in the stranger, has been the subject of contradictory decisions. Where it appeared that the prosecutor's wife had assisted in carrying off the goods, and had continued to cohabit with the prisoner: on objection, the court ruled, that no person could be convicted of a felony in stealing goods when they came into his possession by the delivery of the prosecutor's wife. But in a subsequent case, referred to the opinion of the judges, it was held that where the wife and a stranger steal the goods of the husband, the stranger is guilty of larceny.

Proof of the taking—with reference to the possession of the goods.] It has been already stated, that in order to constitute larceny, there must be such a taking of the goods, as would, without the felonious intent, amount to a trespass. Therefore, if the party obtain possession of the goods lawfully, as upon a trust, for or on account of the owner, by which he acquires a kind of special property in them, he cannot afterwards be guilty of felony in converting them to his own use, unless by some new and distinct act of taking, as by severing part of the goods from the rest with intent to convert them to his own use, he thereby determine the privity of the bailment and the special property conferred upon him, in which case he is as much guilty of a trespass against the virtual possession of the owner, by such second taking, as if the act had been done by a mere stranger.

Proof of the taking—with reference to the possession—original taking not felonious.] In cases, therefore, where the original taking of the goods is not *animo furandi*, a subsequent conversion of them to the party's own use will not constitute larceny. Upon an indictment for stealing, it appeared that the prosecutor's shop (containing the articles mentioned in the indictment) being on fire, his neighbours assisted him in removing his goods for their security; the prisoner probably had removed all the articles which she was charged with stealing, when the prosecutor's other neighbours were thus employed; she removed some of the articles in the presence of the prosecutor, and under his observation, though not by his desire; upon the prosecutor applying to her next morning, she denied that she had any of the things belonging to him, but they were found concealed in her house; the jury found her guilty, but said, that in their opinion when she first took the goods from the shop, she had no evil intention, but that such evil intention came upon her afterwards; and upon reference to the judges, they all held the conviction wrong, for if the original taking were not with intent to steal, the subsequent conversion was no felony, but a breach of trust.—So, where a letter containing a bill of exchange was by mistake delivered to another person of the same name as the person to whom it was addressed, and the person to whom it was so delivered converted the bill of exchange to his own use, being convicted of larceny for this act, a case was reserved for the opinion of the judges, who held the conviction wrong, on the ground that it did not appear that the prisoner had any *animus furandi*, when he first received the letter; and a pardon was recommended.

Proof of the taking—with reference to the possession—original taking not felonious—bailees.] The cases which most usually occur, illustrative of this doctrine, are those where goods have been delivered into the hands of a bailee for a special purpose, who thereby acquires a right to the possession, and who, if he converts them, while in his possession as bailee, to his own use, even *animo furandi*, as he is not guilty of a trespass, is not guilty of larceny by that act. Thus, if goods are delivered to a carrier to be conveyed, and he steals them on the journey, it is no felony.—So where a man delivered his watch to the prisoner to be repaired, who, instead of repairing it, sold it, this was ruled by Vaughan B. to be no felony. So, where the prosecutor had delivered a horse to the prisoner to be agisted at 1*s.* 6*d.* per week, and the latter after keeping the animal for one week, for which he received payment, sold it in the course of the second week; the prisoner having been convicted of larceny, the judges held the conviction wrong.—Upon the principle that it is not felony in a bailee to convert to his own use the goods bailed to him, a nice distinction has been grafted, which seems, says Mr. East, to stand more upon positive law, which cannot now be questioned, than upon sound reasoning. The distinction is thus stated by Lord Hale: if a man delivers goods to a carrier to carry to Dover, and he carries them away, it is no felony; but if the carrier have a bale or

trunk with goods in it delivered to him, and he breaks the bale or trunk, and carries away the goods *animo furandi*, or if he carries the whole pack to the place appointed, and then carries it away *animo furandi*, it is a felonious taking; but that must be intended where he carries them to the place, and delivers or lays them down, for then his possession by the first delivery is determined, and the taking afterwards is a new taking. This distinction has been recognized and acted upon in numerous cases, not only of carriers and other bailees, where the bailment has been determined by breaking bulk &c., but likewise in the case of other persons, having a special property, where the contract conferring the special property has been terminated by the tortious act of the party. A farmer sent forty bags of wheat to the prisoner, who was a warehouseman, for safe custody; the prisoner took eight of the bags, and shooting the wheat out on the floor, mixed it with four bags of inferior wheat, and sold the whole twelve for his own benefit; he replaced the wheat thus taken from the prosecutor with inferior wheat of his own; it did not appear that there was any severing of part of the wheat in any one bag, from the residue of the wheat in the *same* bag; the prisoner being convicted of larceny, the judges were unanimously of opinion that the conviction was right, that the taking of the whole of the wheat out of any one bag, was no less a larceny than if the prisoner had severed a part from the residue of the wheat in the same bag, and had taken only that part, leaving the remainder of the wheat in the same bag. In order, therefore, to establish a larceny of goods which have been bailed, some act determining the bailment must be proved.—Where A asked the prisoner, who was not her servant, but only a casual acquaintance, to put a letter in the post, telling her it contained money, and the prisoner broke the seal and abstracted the money before she put it in the post; the judges held that she was guilty of larceny.—Although a contrary opinion appears to have been formerly entertained, yet it is now settled, that when the owner parts with the possession of goods for a special purpose, and the bailee, when that purpose is executed, neglects to return, and afterwards disposes of them, if such bailee had not a felonious intention when he originally took the goods, the subsequent withholding and disposing of them will not constitute a new felonious taking, nor make him guilty of felony.

Proof of the taking—with reference to the possession of the goods—cases of servants.] Where a person has the bare charge or custody of goods, the legal possession of such goods remains in the owner, and larceny may be committed by the person having such a bare possession or custody. He that has the care of another's goods, says Lord Hale, has not the possession of them, and therefore may, by his felonious embezzling of them, be guilty of felony: as the butler who has the charge of his master's plate, the shepherd who has the charge of his master's sheep; and so it is of an apprentice that feloniously embezzles his master's goods.—So where a carter goes away with his master's cart.—The prisoner was a drover and had been employed by the prosecutor as such, off and on, for nearly five years; being employed by him to drive a number of sheep to a fair, he sold several of them, and applied the money to his own purposes; being indicted for larceny he was found guilty; but the jury also found that he did not intend to steal the sheep at the time he took them into his possession; on a case reserved, all the judges who met were of opinion, that as the owner parted with the custody only, and not with the possession, the prisoner's possession was the owner's, and that the conviction was right.—So, where the prosecutor delivered to his servant a sum of money to carry to a person, who was to give him a bill for it, and the servant appropriated it to his own use, the judges were of opinion that this was not a mere breach of trust, but a felony. And where the servant of the prosecutor went to her master's wife, and told her she was acquainted with a person who could give her ten guineas' worth of silver, and the prosecutor's wife gave her ten guineas for that purpose, which she ran away with, she was found guilty of the larceny.—In order to render the offence larceny, where the property is taken by a servant, it must appear that the goods were at the time in the possession of the master. It is not, however, necessary that they should be in his *actual* possession; it is sufficient if he has a constructive possession, or possession in law. Therefore, where a man purchases goods, and sends his servant to receive them, and the servant carries them away, it is larceny, for the property carries with it the possession in law. On the other hand, unless the possession of the goods, actual

or constructive, be in the prosecutor, no larceny can be committed upon them with regard to him. This distinction is very material, as drawing the line between larceny and embezzlement.—If the goods are not in the actual or constructive possession of the master at the time they are taken, the offence of the servant in taking them will be embezzlement, and not larceny. Therefore, where goods in the possession of a third person, and not yet delivered over to the master, are delivered to the servant, who appropriates them to his own use, this is not a larceny, for the time of the larceny must be referred to the period of the receipt of the goods by the servant, at which time there was no possession in the master, without which there could be no trespass, and no larceny. If, says Mr. East, the master had no otherwise the possession of the goods than by the bare receipt of his servant, upon the delivery of another for the master's use, and the servant have done no act to determine his original, lawful, and exclusive possession, as by depositing the goods in his master's house, or the like—although to many purposes, and as against third persons, this is in law a receipt of the goods by the master, yet it has been ruled otherwise in respect of the servant himself, upon a charge of larceny at common law, in converting the goods to his own use; because as to him, there was no tortious taking in the first instance, and consequently no trespass, as there is where a servant converts to his own use property in the virtual possession of his master.

Proof of the taking—distinction between larceny and obtaining goods, &c. by false pretences.] As the character of the transaction depends upon the intention of the parties, that intention must determine the nature of the offence. It is not however sufficient to show simply a felonious intent, an *animus furandi* on the part of the offender; the mere intent to commit felony, or rather fraudulently to appropriate the matter in question to the party's own use, is not sufficient to render the taking felonious, where the owner, although induced by the false representations of the offender, intends to part with his property in the matter delivered. The law of Scotland is the same as our own on this point; and the principle of the distinction between larceny and false pretences is well expressed in the following passage from a writer on the criminal law of that country; "Where possession is obtained by such false representations as induce the owner to sell or part with *the property*, the crime is swindling. But a variety of cases frequently occur, in which the possession is obtained, not on any contract or agreement adequate to pass the property, but on some inferior title, adequate to give the prisoner the right of *interim* custody. The distinction between such cases, and those in which the property is obtained on a false pretence, lies here,—that in the one case, the proprietor has agreed to transfer the property, and therefore he has only been imposed upon in the transaction; in the other, he has never agreed to part with his property, and therefore the subsequent appropriation is theft."—There is a numerous class of cases in which goods have been obtained from the owner with a fraudulent intent, but where the owner only intended to part with the possession, and not with the property in them. In these cases it has been held, that if the prisoner had the *animus furandi* at the time of the taking, and has converted the goods to his own use, the offence amounts to larceny. It has been generally in cases of this kind, that the distinction between larceny and obtaining goods under false pretences has been lost sight of. The false pretences are only the mode employed by the offender to procure the possession of the property, and render the case no less a larceny than if he had taken the property without the knowledge of the owner, or by force. The real distinction is, whether the owner intended to pass the right of property; if he did not, it is the subject of an indictment for larceny—if he did, of an indictment for obtaining money by false pretences.—But if there be only a negotiation for a purchase, and such purchase be not complete, the taking will amount to larceny, if there be a felonious intent on the part of the prisoner; as in the following case, which well illustrates the distinction between the offence of larceny, and of obtaining goods under the false pretence of purchasing them. The prisoner was indicted for stealing two silver cream ewers from the prosecutor, a silversmith; he was formerly servant to a gentleman, who dealt with the prosecutor, and, some time after he had left him, he called at the prosecutor's shop, and said that his master (meaning the gentleman whose service he had left) wanted some silver cream ewers, and desired the prosecutor to give him one, and to put it down to his master's account; the prosecutor gave him two ewers, in order that his master might select the one he liked best; the prisoner took both, sold them, and absconded; at the trial, the prosecutor swore that he

did not charge the master (his customer) with the cream ewers nor did he intend to charge him with either, until he had first ascertained which of them he had selected ; it was objected for the prisoner, that this amounted merely to obtaining goods under false pretences ; but Bayley J. held, that as the prosecutor intended to part with the possession only, and not with the right of property, the offence was larceny, but that if he had sent only *one* cream ewer, and had charged the customer with it, the offence would have been otherwise.

Proof of the things stolen.] The goods taken must appear in evidence to be *personal goods ;* for none other can be the subject of larceny at common law. At common law larceny could not be committed of things that savoured of or adhered to the freehold, as trees, grass, bushes, bridges, stones, the lead of a house, or the like : the stealing such things was only trespass : but if these things be severed from the freehold, as wood cut, stones dug out of a quarry, &c., then felony might be committed by stealing them, for then they are personal goods : and so strict was the rule in this respect, that a larceny could not be committed even of title-deeds, or any other charter or writing concerning the realty, or even of the box in which they were kept. This state of the law has been remedied by various statutes, which make it felony to steal the ore of certain metals or stones from mines ; to steal, or destroy or damage with intent to steal, any trees, saplings, shrubs, or underwood ; to steal, or destroy with intent to steal, any fence, railing, or gate ; or any cultivated root or plant ; and to steal, or rip, cut, or break with intent to steal, any glass or wood work, or any thing made of metal, or utensil, or fixture, fixed to any building, or anything made of metal fixed in any land, being private property, or for a fence to any dwelling house &c., or in any place dedicated to public use or ornament :—and so it is now a misdemeanor to steal any record, &c., or any original document belonging to a court of record, or relating to any cause or matter, civil or criminal, begun, depending, or terminated, in any court of record or equity ; or to steal, or fraudulently destroy, or conceal, any testamentary instrument relating to any real or personal estate ; or to steal any paper or parchment being evidence of the title to any real estate. Bonds, bills, &c., being mere *choses in action*, are not the subject of larceny at common law, for they are of no intrinsic value ; but now by different statutes it has been constituted felony to steal any valuable security, as for money or the payment of money, or entitling or evidencing the title of any person or body corporate to any share or interest in any public stock, or in any fund, or savings-bank &c : and it is felony if any person employed under the post-office steals, or for any purpose whatever embezzles, secretes, or destroys a post letter : so, to steal any chattel, money, or valuable security out of a post letter, is felony : and if any person in the public service, entrusted by virtue of his office with the receipt, custody, management, or control of any valuable security, embezzles, or fraudulently misapplies the same, or any part thereof, it is felony. Larceny at common law cannot be committed of things which are not the subject of property, as of a dead corpse ; but it is a high misdemeanor to disinter a dead body for the purpose of dissection, or to sell and dispose of it for gain and profit. So, of things in which no person has any determinate property, as treasure trove, waifs, &c., till seized, it has been said that larceny cannot be committed ; but it would seem that the true owner, though unknown, has still a property in them, before seizure by the lord, unless there be circumstances to show an intended dereliction of the property : the same has been said of wreck ; but now by statute it is felony, to plunder or steal any part of a ship or vessel in distress, wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind, belonging to such ship or vessel ; but if articles of small value, stranded or cast on shore, be stolen without circumstances of cruelty, outrage, or violence, the offender may be punished for simple larceny. Again, no larceny at common law can be committed of such animals in which there is no property either absolute or qualified ; as of beasts that are *feræ naturæ*, and unreclaimed ; such as deer and hares, in a forest ; fish in an open river or pond ; or wild fowls, at their natural liberty. But if they are reclaimed or confined, and may serve for food, it is otherwise : so all valuable domestic animals, as horses, and all animals *domitæ naturæ* which serve for food, as swine, sheep, poultry, and the like, and the product of any of them, as eggs, milk from the cow while at pasture, wool pulled from the sheep's back feloniously ; and the flesh of such as are *feræ naturæ* ; may be the subject of larceny ; but as

to other animals which do not serve for food, such as dogs, ferrets, though tame and saleable, and other creatures kept for whim and pleasure, stealing these does not amount to larceny, at common law. But the statutes have made it felony, or otherwise punishable to steal or kill, &c. deer which are private property; and special punishments have been enacted for taking or killing hares or conies in any warren, &c.; for stealing any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law; knowingly being in possession thereof, or of the skin or plumage thereof; for killing wounding or taking any dove-house pigeon, under such circumstances as do not amount to larceny at common law; and for stealing dogs. To take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling house of any person being the owner of such water, and having a right of fishery therein, is a misdemeanor; and to take and destroy fish in any other water being private property, or in which there shall be any private right of fishery; and to take and destroy fish by angling in the day-time, in either description of water; is punishable upon summary eviction by fine varying according to the nature of the offence.—*Roscoe and Archbold.*

SECTION II.

OF PLUNDERING AND CHOHAREE.

Subject to discretionary punishment.

4158. Persons convicted of plundering (loot-oo-taraj) not amounting to robbery by open violence, as defined in cl. 1, sect. 3, Reg. LIII. 1803 (in consequence of the absence of proof of the *criminal intent* of committing robbery at the time of the going forth of the party, which is a necessary ingredient of the foregoing offence as declared in the above regulation) are liable to discretionary punishment. And this is the case whether the property be seized and forcibly brought away, and appropriated to their own use by the plunderers, or whether it be merely wasted and destroyed.(*a*) C. O. No. 80 of vol. 4. *L. P.*

(*a*) This order was issued on the following futwa delivered by the law officer of the sudder court:—

1st Question.—A number of persons are sent to commit violence in a house, for such a purpose as to beat the owner, or carry some person away by force, or to prevent a marriage, or the like. Robbery or plunder of any property from *any person* is not a part of the intention with which they go to the house; but, being there, they seize and forcibly bring away and appropriate to their own use the articles of property they find in the house. How is plunder of this kind, committed *not on any person*, but yet committed openly, regarded by the Mahomedan criminal law?—Is it punishable as a crime, and under what head of the Mahomedan law, and to what punishment is it liable? State your opinion and name the authorities.

Answer to the 1st Question.—The offence in question (*i. e.* plunder of the description mentioned in the question) is a crime under the head of *ghusb*, or usurpation, because *ghusb* in its *literal* sense means the forcibly taking a thing from another, and in *law* it signifies the taking of the property of another (provided it be capable of being valued and be sacred),* without the consent of the owner, in such a manner as to destroy the possession of the owner. If the same is committed knowingly and wilfully, the act is held to be a criminal one, and the offender becomes responsible for a ziman, or compensation; and if it is committed erroneously, the act is nevertheless liable for compensation, because a compensation is the right of man, and it cannot be dispensed with owing to the actor not having wilfully committed the act, but in this case the act will not be a criminal one, as it is only an erroneous offence. In the above case, the offenders will also be liable to punishment by *tazeer*, at the discretion of the hakim.

* Sacred properties are those which are regarded and respected as such under the Mahomedan law. They are the properties of Musulmans, of *zimmee, viz.*, foreigners who have *permanently* settled themselves under the protection of the Mahomedan ruler, and of *mustamun, viz.*, foreign traders, &c., who have temporarily (for any period under one year) settled themselves under the protection of the Mahomedan ruler.

4159. Such cases are to be entered in the criminal statements as "riotous assault with forcible plundering (or destruction) of property, not amounting to dacoity." C. O. No. 80 of vol. 4. *L. P.*

When offence is doubtful, charge to be on both counts.

4160. In cases committed to the sessions, if there should be a doubt as to the exact offence, whether dacoity or riotous assault with plunder, the prisoners are to be charged on both counts, so that, on failure of conviction of the one offence, it may be had of the other. C. O. No. 80 of vol. 4. *L. P.*

Distinguished from theft by the absence of the *animus furandi* in the taking.

4161. Where the property is not taken *animo furandi*, a subsequent appropriation of the property will not warrant a conviction of theft, but the prisoner may be punished for wrongful taking. Reports *W. P.* 1855, part 2, page 749.

Nature of offence to depend on the concert with which prisoners act.

4162. When the prosecutor's boat was wrecked and the villagers carried off the property, and the magistrate sentenced forty of the villagers to imprisonment and fine under sect. 19, Reg. IX. 1807; and the session judge recommended that the sentence be quashed, and that the magistrate be directed to commit the case to the sessions as one of robbery or theft; the court observed that it would seem that there was no concerted and conjoint plot among the plunderers to act together for one common object; that every man might probably have come to appropriate, and carry off, whatever he could for himself; and that each must, in that event, be held responsible for what he himself did, and was, consequently, punishable within the limits of a magistrate's authority as for a misdemeanor, unless there were distinct evidence against him of carrying off property of a value, which, in a case strictly of theft, would take the charge out of the magistrate's competency. Reports *L. P.* 1852, part 2, page 793.

Ruling of the court under the Mahomedan law.

4163. In order to make the offence theft, there must be a secret entry into a house by night; though, if the commission be during the night, a subsequent violence, after a stealthy and clandestine entry, will not take away the character of theft. This was ruled in a case in which the prisoners entered the house of the prosecutrix at night by the door, and carried off all her property, compelling her by force to remain quiet during the commission of the act. It was held not to be theft under the Mahomedan law. Reports *L. P.* 1853, part 2, page 143.

Rules regarding wrecks of boats with merchandize.

4164. It being apprehended that the wreck or burning of boats laden with merchandize is often occasioned either by the misconduct of the boatmen, or by the rapacity of the inhabitants along the river banks, who thus endeavour to conceal the crime of which they have been guilty, magistrates are required to exercise the greatest vigilance on such occasions. Enquiry must always be made into the cause of such events and a report furnished by the darogah to the magistrate. Whenever on the complaint of the charhandar or officer in

2nd Question.—State the like opinion and authorities if the property be not carried away and appropriated, but wasted and destroyed?

Answer to the 2nd Question.—In this case also the offender will be responsible for compensation of the property destroyed and wasted, and liable to punishment by *tazeer*. Quotes a well-known Arabic example to the effect that "whoever shall destroy another's property must be liable for compensation."

charge of the boat on the part of the owners of the cargo, or from any other sufficient cause, there be reason to suppose that the loss or destruction of the boat is owing to the wilful misconduct of the boatmen or the violence of lawless depredators, a searching enquiry should be made into the circumstances, and the suspected persons should be arrested and dealt with as the law directs. Every means must also be taken for the preservation of the goods which are saved from the boat. For this purpose the charhandar should not be unnecessarily interfered with, but he must be supported and protected in the discharge of his duty. If there be not present any charhandar or person empowered to act for the owners, the police must themselves take charge of the goods. In order the better to enable the owners of goods to keep a check on their agents, and to inform themselves of the real cause of the losses they may sustain, they are invited, whenever they hear of the loss of a boat, to address to the magistrate, post-paid, a communication either in English or Ordoo in the annexed form.(*a*) The magistrate to whom it is addressed is to cause a brief extract to be drawn up in his office, explaining in Oordoo the circumstances of the case, so far as they can be ascertained, and is to forward it for the information of the owner through the magistrate of the district in which he may reside. Magistrates are to use every precaution that the vigilance, which is exercised for repression of wrong, be not made the means of petty extortion from well-conducted and unoffending travellers or traders. Commissioners are to notice such cases in their annual reports. C. O. Govt. *W. P.* No. 1638, May 5, 1849.

Precedents.

Plundering attended with murder;

4165. Five prisoners convicted on strong presumption of having perpetrated the wilful murder of a charhandar, in charge of property on board a boat to which they were attached as boatmen, and of having embezzled the said property, and sunk the boat, were sentenced to stripes and transportation for life; *N. A. R. vol.* 2, *page* 28. Where the prisoners were convicted of plundering a stranded boat, and the offence did not amount to robbery by open violence, they were sentenced to imprisonment for three years; *N. A. R. vol.* 2, *page* 315. When the crew of a stranded vessel broke open the box of a passenger and appropriated its contents, they were convicted of theft, and sentenced to imprisonment for three years; *N. A. R. vol.* 5, *page* 180.

unaggravated.

Choharee.

4166. Where a prisoner was convicted of having joined and associated with a band of chohars, and of having at different times, at night, in company with gangs of chohars

(*a*) FORM OF APPLICATION TO MAGISTRATES.

I have the honor to inform you that I have received information of the loss of goods, dispatched hence by boat as by the annexed memorandum.—With reference to the government notification of the 5th May, 1849, I shall feel obliged by such information regarding the cause and extent of the loss as you may be able to afford me. I have, &c.

To be signed by full name legibly written and address.

Description and size of boat.	Name and residence of charhandar.	Name and residence of manjee.	Description of cargo.	Where said to have been lost.	How supposed to have been lost.	REMARKS.
						Here may be entered any suspicious circumstances that may be known regarding the loss.

armed with offensive weapons, extorted by intimidation quantities of grain from several persons; the futwa declared that the offence was not specifically provided for by any stated penalty in the Mahomedan law, but that it was very similar to *katta-oot-tarik*, or highway robbery, and liable to discretionary punishment by tazeer; and the court, taking into consideration all the circumstances of the case, and the offence not having been especially provided for by any regulation, sentenced the prisoner, under the discretionary power vested in them by cl. 3, sect. 7, Reg. LIII. 1803, to stripes and transportation for life. *N. A. R. vol.* 1, *page* 336.

Plundering, attended with homicide;

4167. A large body of men armed with spears, clubs, and swords, and having lighted torches with them, attacked the house of a person for the purpose of carrying off his wife; the woman however escaped, but in the progress of the outrage her husband received a wound from a spear of which he died the following day; and the house was then plundered; the prisoners, convicted of being accomplices in the attack and plunder, were sentenced, the one who gave the fatal blow to imprisonment for life, the leader and contriver of the plot to imprisonment for 14 years, and the rest for 7 years; *N. A. R. vol.* 4, *page* 49. Where the prisoners were convicted of being accessaries before the fact to the plunder of a boat laden with grain by a large body of villagers, they were sentenced to imprisonment for 5 years; *N. A. R. vol.* 1, *page* 391.

unaggravated.

SECTION III.

OF THEFT AND ROBBERY.

Definitions.

The absence of ownership in the thing stolen does not affect the guilt of the thief.

4168. A person being charged with stealing a brahmini bull, which had been dedicated to religion and allowed to wander about without restraint, it was held that the fact of there being no ownership in any individual did not affect the criminality of the act, which must depend altogether on the *animus* by which the accused was actuated. Const. No. 803.

Appropriation by a servant of his master's property.

4169. The clandestine removal by a servant from his employer's residence of property placed under his custody by his employer, with the intent of appropriating such property to himself, amounts to theft. But where the servant appropriates the property without removing it from the premises of his employer, the offence amounts to embezzlement only. *N. A. R. vol.* 5, *page* 165. So, where a servant who had charge of his master's property removed and disposed of it for his own use, it was held that he had stolen it, because the possession of it had not been relinquished by his master when he entrusted the prisoner with the care of it. If the prisoner had pledged the property with his master's sanction and appropriated the money to his own use, he would have been guilty of embezzlement. *Reports L. P.* 1854, *part* 1, *page* 776. So, where a servant received from his master 500 rupees to convey to another person and appropriated it, he was convicted of theft. *Reports W. P.* 1855, *part* 2, *page* 174.

Appropriation by crew of a stranded vessel of property of a passenger.

4170. Where the crew of a stranded vessel broke open a box belonging to a passenger (who had left the vessel), removed the property, and appropriated it to themselves, they were convicted of theft; and the conviction by the magistrate "of the fraudulent appropriation of the property of the prosecutor" was quashed. N. A. R. vol. 5, page 180.

Distinction between theft and fraud depends on the intent of the owner to pass the right of property in the goods or merely possession.

4171. The court admitted the distinction acknowledged by English law between theft and fraud when the goods have been obtained by false pretences, which depends upon the question whether the owner intended to pass the right of property or merely the possession. "The taking and carrying away are felonious, where the goods are taken against the will of the owner, either in his absence or in a clandestine manner, or where possession is obtained by force or surprise, or by any trick, device, or fraudulent expedient, the owner not voluntarily parting with his entire interest in the goods, and where the taker intend, in any such case, fraudulently to deprive the owner of his entire interest in the property against his will." Reports *W. P.* 1856, part 1, page 645.

Commitment.

Cases which *must* be committed; if attended with murder or severe personal injury;

4172. In all cases of theft, whether in a house, ware-house, or other place, or from the person of another (not coming within the provisions of the regulations in force for the punishment of robbery by open violence, or the provisions of cl. 1, sect. 2 of this regulation, *i. e.* cases of burglary), if the theft, or the attempt to commit the same, has been accompanied with murder or with an attempt to commit murder; or with wounding, burning, severe corporal injury, or other aggravating act of personal violence; it is the duty of the magistrate to commit the whole of the prisoners, who appear from the evidence adduced to have been concerned, either as principals or accomplices, in the offence, to take their trial before the sessions court. Reg. XII. 1818, sect. 3, cl. 2.

or if the amount or value of property stolen exceeds 300 rupees.

4173. In cases of theft where the amount or value stolen exceeds the sum of three hundred rupees, the amount is to be deemed a circumstance taking the case out of the magistrate's jurisdiction as to passing sentence on the accused, and is to make it necessary for him to commit the accused for trial to the sessions court. Reg. IV. 1820, sect. 4.

Trifling injury does not necessitate commitment.

4174. Where the offence is accompanied with only trifling injury to the person, commitment is not requisite. Reports *L. P.* 1853, part 2, page 241.

Cases which *may* be committed.

4175. The magistrate is also to exercise his discretion in committing for trial before the sessions court any persons charged with theft, although not attended with the aggravating circumstances above-mentioned, who from their notoriously bad character, or from their having been before convicted of a heinous offence, or from any other peculiar circumstances of the case, appear to him deserving of a severer punishment than the magistrate is authorized to inflict under the following clauses of this section. Reg. XII. 1818, sect. 3, cl. 2.

Previous conviction of theft of 10 rupees not to be deemed previous conviction of a heinous crime.

4176. A previous conviction of petty theft, not exceeding 10 rupees, when unattended with any aggravating circumstance, is not to be deemed a previous conviction of a heinous crime, such as precludes the magistrate's judicial cognizance of a charge of burglary or

theft, or of buying or receiving stolen property, and requires that the prisoner be committed for trial before the sessions court. (*a*) Reg. VI. 1824, sect. 5.

Magistrate may commit under *any* peculiar circumstances; but the express circumstances must be mentioned in his roobakaree of commitment.

4177. A magistrate is not bound to dispose of a case of theft, although within his competency, but may commit the offenders to take their trial before the sessions court under the above provisions, should any peculiar circumstances in the case induce him to consider this course of proceeding preferable; but in such case it is incumbent on him to state, in his roobakaree of commitment, the express circumstance or circumstances of aggravation, which have led him to commit the case, instead of disposing of it himself. The session judge is to furnish the same information in his abstract statement of sentences passed without reference. Const. No. 391, para. 5. C. O. No. 239 of vol. 1.

Judge how to proceed if no special grounds are recorded, or if he considers the commitment improper.

4178. In such case, where no special grounds are assigned in the roobakaree of commitment, or are shown on the proceedings to justify the commitment, the session judge is not competent to return the proceedings without trial, and to instruct the magistrate to dispose of the case; but he should call upon the magistrate to supply the omission, and in the event of insufficient ground for commitment being shown, he should, nevertheless, proceed to decide the case, contenting himself with recording, in his final proceeding or otherwise, a caution to the magistrate against making unnecessary commitments in future; and not exceeding (if the prisoner be convicted) that measure of punishment which it would have been competent to the magistrate to award, had he himself disposed of the case.* Const. No. 391, para. 6.

* *See para.* 1059.

Examples of magistrate's power to commit or pass sentence.

4179. On a second conviction of simple theft of property not exceeding 300 rupees,—the amount or value of property stolen in the first case being above 10 rupees, but not exceeding 300 rupees,—a magistrate is competent to pass sentence of punishment, provided that the amount of the latter theft does not exceed the sum of 300 rupees. Const. No. 419.

4180. A magistrate is competent to sentence a prisoner convicted of cattle stealing, who has been previously convicted of the same offence. Const. No. 1273.

4181. In a case of theft by servant of his master's property, the amount or value of which is above 50, but does not exceed 300 rupees, and which is unattended with personal violence or other circumstance of aggravation, such as to bring the case within cl. 2, sect. 3, Reg. XII. 1818 [*i. e.* cases which *must* be committed], the magistrate is competent to punish the offender on his own authority to the extent specified in cl. 4 of the section quoted. Const. No. 391, para. 4.

In all other cases the magistrate *may not* commit.

4182. With exception to the cases above-mentioned, the magistrates are to hear and determine, without reference to the sessions court, all other cases of theft, and after having duly considered the evidence which is adduced on the part of the prosecution and of the prisoner, are to pass sentence of acquittal or conviction. Reg. XII. 1818, sect. 3, cl. 3.

(*a*) There appears an ambiguity in the wording of this provision inasmuch as agreeably to the provisions of Reg. XII. 1818, a previous conviction of a heinous crime of whatever nature does not preclude the magistrate's judicial cognizance of a charge of simple theft not exceeding 300 rupees. Const. No. 419, para. 8.

Rule for determining the value of the property stolen.

4183. The declaration of the prosecutor on oath as to the value of property taken must be considered sufficient to determine in the first instance the tribunal by which the case should be tried; provided of course that there is no reason to impugn the truth of it, on which point the magistrate is competent to make such enquiries as he thinks proper and to proceed accordingly. Const. No. 1030.

So, where the amount of property is the only reason for commitment.

4184. But in a case where the alleged value of the stolen property is the only reason for the commitment of the prisoner, the magistrate is to put on record such proof as may show reasonable probability that the loss sustained by the prosecutor really amounts to the sum specified and charged in the indictment. C. O. No. 8, September 12, 1854.

Magistrate's powers.

Penalty to be awarded by magistrate, if property stolen exceeds 50 rupees; in case of previous conviction; where the offender is a watchman or police officer; or a servant of the person robbed; or employed in the house robbed; and in cases of cattle stealing.

4185. In cases of theft cognizable by the magistrate under the foregoing rules, if the amount or value of the property stolen exceeds 50 rupees; or if the persons committing the theft have been before convicted of theft, burglary, robbery, or other heinous offence; or if the prisoner has committed the offence while employed in the office of watchman,(*a*) guard, or police officer, as described in sect. 4, Reg. III. 1805 [see para. 4146]; or is a servant of the person from whom the property has been stolen; or a servant employed in the house in which the theft has been committed; as well as in all cases of cattle stealing; the magistrate is empowered, on proof of the guilt of the prisoner, to sentence him to imprisonment with hard labor for such period as appears proper, not exceeding 2 years, and to corporal punishment [commutable by cl. 2, sect. 2, Reg. II. 1834 to one year's additional imprisonment]. Reg. XII. 1818, sect. 3, cl. 4.

Meaning of term "cattle."

4186. The term "cattle," as used above, must be held to include not only bullocks and buffaloes, but also horses, cows, sheep, goats, and donkeys. Const. No. 994.

Punishment after previous conviction of theft not exceeding 10 rupees.

4187. The rule in sect. 5, Reg. VI. 1824,* which declares a petty theft not exceeding 10 rupees not to be a heinous offence, applies only to the question of commitment; and cannot be held to supersede that contained in the above provision, which authorizes a magistrate to pass sentence of two years' imprisonment and stripes on conviction of theft, where the offender has been before convicted of the same, whatever may be the amount taken in either(*b*) case. Const. No. 488.

* *v. para.* 4175.

Case of incorrigible thief.

4188. A magistrate was informed that he was competent to inflict the full punishment of two years' imprisonment on a woman convicted of theft, on the ground of her having been twice before convicted, and appearing to be an incorrigible thief. Const. No. 468.

It is no aggravation that the prisoner has been formerly employed as a watchman: the magistrate is to state whether he was so employed at the time of committing the offence.

4189. When a prisoner was not a watchman at the time of committing the offence, the circumstance of his having been one formerly, or his being so denominated, is not to be regarded as a circumstance of aggravation under the above provisions. The magistrates are to state distinctly, in the column of remarks of the statements which they furnish of prisoners punished by them under Reg. XII. 1818, whether a prisoner whose pro-

(*a*) This applies to private watchmen, entertained by individuals, as well as to those in the public service: see para. 4240.

(*b*) This is not strictly correct; for if the amount stolen in the case under trial exceeds 300 rupees, the magistrate is not competent to pass sentence, under sect. 4, Reg. IV. 1820. See para. 4172.

fession is that of gorait, dhanuk, or any other description of watchman, was, at the time of committing the offence of which he is convicted, actually employed in the capacity of guard or watchman, as described in sect. 4, Reg. III. 1805, or otherwise. C. O. No. 297 of vol. 1.

Unaggravated thefts punishable by imprisonment for 6 months;

4190. In other cases of theft, not included in the foregoing provisions, the magistrate is either to refer the case for decision to his assistant, under the powers vested in the assistant to the magistrate by the regulations in force, or is to proceed to investigate them himself, and to pass sentence on the prisoners under the powers vested in him by sect. 19, Reg. IX. 1807 [*i. e.* imprisonment not exceeding 6 months and corporal punishment]. Reg. XII. 1818, sect. 3, cl. 5.

and for one year in addition in lieu of corporal punishment:

4191. A sentence of one year's imprisonment in lieu of corporal punishment, passed by a magistrate on a conviction of theft not exceeding 50 rupees in addition to imprisonment for 6 months, is not illegal under the wording of cl. 2, sect. 2, Reg. II. 1834. Const. No. 1183.

in unaggravated cases the sentence cannot be more severe.

4192. A magistrate is not competent, in cases of theft, to pass sentence of imprisonment exceeding 6 months [and stripes], unless the theft has been attended by one or more of the six aggravating circumstances enumerated in cl. 4, sect. 3, Reg. XII. 1818. Const. No. 358.

If theft does not exceed 50 rupees, stripes may be awarded to an adult offender.

4193. It is competent to a magistrate, on conviction in cases of theft of property not exceeding in value the sum of fifty rupees, to sentence the prisoner convicted to corporal punishment not exceeding 30 stripes of a ratan.(*a*) Act III. 1844, sect. 1.

If the offender is of tender years, the punishment is to be by stripes not exceeding 10.

4194. It is competent to a magistrate, and he is hereby required, on conviction in cases of theft of property not exceeding in value the sum of fifty rupees, if the person convicted appears to him by inspection or other evidence to be of such tender years as to require punishment rather in the way of school discipline than of ordinary criminal justice, to sentence such person to corporal punishment with a light ratan not exceeding 10 stripes. Act III. 1844, sect. 2.

Under these provisions, if the offender is adult, the magistrate may punish by imprisonment or stripes; if of tender years, he *must* award stripes.

4195. By section 1 of these provisions, magistrates are declared *competent*, in certain cases, to inflict corporal punishment on adult offenders; and are at liberty, therefore, whenever they may deem such a course preferable, to sentence such offenders when convicted of theft of property not exceeding 50 rupees in value to the other penalties prescribed by pre-existing laws for that offence. Section 2, on the other hand, leaves no discretion whatever to the magistrate as regards juvenile offenders, imperatively enacting that he shall punish such, in cases of the nature under notice, rather in the way of school discipline than ordinary criminal justice, by sentencing them to undergo corporal punishment with a light ratan. C. O. No. 174 of vol. 3, para. 2.

The same rule applies to the case of a prisoner con-

4196. A question has arisen regarding the course to be pursued towards persons convicted a second time of theft of property not exceeding 50 rupees in value, whether

(*a*) This recurrence of the legislature to corporal punishment is declared to be merely temporary, "until adequate improvements in prison discipline can be effected."

corporal punishment should be repeated, or other regulations providing for such contingencies enforced. Referring to the above construction of Act III. 1844, which leaves the infliction of corporal punishment, or the imposition of other penalty on adult offenders, in cases falling under its provisions, discretionary with the magistrate on primary conviction, —the courts of nizamut adawlut have ruled, that, as regards those offenders, a similar discretionary power is vested in the magistrate relatively to secondary convictions; and further, in maintenance of the broad distinction between the cases of adult and juvenile offenders, they have determined that if a juvenile offender who has been once sentenced to corporal punishment be still, on the occasion of his re-apprehension and second conviction of theft of property not exceeding 50 rupees in value, of such tender years as to require, in the opinion of the magistrate, that he should be punished rather in the way of school discipline than ordinary criminal justice, it is incumbent on the magistrate to pass sentence of corporal punishment. C. O. No. 174 of vol. 3, para. 3.

victed of a second offence not exceeding 50 rupees, who has previously been punished by stripes.

4197. Attempts to commit theft do not fall under the provisions of Act III. 1844. C. O. No. 3 of vol. 4.

Attempts to commit petty thefts are not punishable by stripes.

4198. No female is to be subject to corporal punishment; and in cases of infliction of corporal punishment, no other punishment is to be superadded; and the punishment is to be inflicted on all occasions in the presence of the magistrate. Act III. 1844, sect. 3.

Conditions of sentence of corporal punishment.

4199. Under the provisions of Act III. 1844, magistrates, joint magistrates, and persons lawfully exercising the powers of a magistrate, are alone competent to award corporal punishment; and the corporal punishment must be inflicted in the presence of such officers only. C. O. No. 174 of vol. 3, paras. 1 and 4.

Stripes can be awarded only by officers exercising the powers of a magistrate.

4200. Whenever a prisoner is charged before a magistrate or joint magistrate with two or more distinct offences, for neither of which he has been previously brought to trial; but for each of which he would be subjected, on conviction, to the penalties prescribed by cl. 4, sect. 3, Reg. XII. 1818 [*i. e.* in cases of theft attended with one of the aggravating circumstances which do not take the case out of the magistrate's competence]; the magistrate is to refrain from passing any sentence, until he has completed his proceedings in both cases. Reg. VI. 1824, sect. 2, cl. 1.

Where the prisoner is charged with 2 or more distinct offences both aggravated, magistrate how to proceed;

4201. Should the prisoner be convicted of two or more of the offences charged, the magistrate is authorized to reduce the punishment so as not to exceed in the aggregate imprisonment for the term of two years and stripes [or one year's additional imprisonment], provided he is of opinion, on consideration of the several acts of criminality established against the prisoner and the circumstances of each case, that the punishment above specified is sufficient. Reg. VI. 1824, sect 2, cl. 2.

and what amount of punishment he may award:

4202. If, however, the magistrate is of opinion that the prisoner is deserving of a more severe punishment than that above specified, he is to refrain from passing any sentence, and is to commit the prisoner to take his trial before the sessions court for each offence. Reg. VI. 1824, sect. 2, cl. 3.

but he may commit if he thinks it necessary.

4203. The provisions of cl. 1, sect. 2, Reg. VI. 1824 are extended to cases in which a prisoner is charged before a magistrate or joint magistrate with two or more distinct

Where both the offences charged are petty thefts,

magistrate how to proceed;

thefts, not being of the nature of those described in cls. 2 and 4, sect. 3, Reg. XII. 1818 [*i. e.* cases of theft which the magistrate must or may commit to the sessions, or attended with one of the circumstances which do not take the case out of the magistrate's competence; —or in other words, cases of petty theft, in which the magistrate cannot award a higher sentence than imprisonment for six months and one year's additional imprisonment in lieu of stripes], for neither of which he has been previously brought to trial; and those officers are to observe the course of proceeding laid down in the first quoted provisions in the trial of such cases. Reg. VI. 1829, sect. 2, cl. 1.

and what amount of punishment he may award:

4204. Should the accused be convicted of two or more of the offences charged, the magistrate or joint magistrate is authorized to pass a sentence upon the prisoner for any term of imprisonment not exceeding two years with labor, in addition to the corporal punishment [or additional imprisonment] which those officers are empowered to inflict under the regulations. Reg. VI. 1829, sect. 2, cl. 2.

but he may commit if he thinks the prisoner deserving of a more severe punishment.

4205. The magistrates and joint magistrates are empowered to commit, for trial before the sessions courts, any persons charged with two or more offences of the above description, whenever they are of opinion that there exist any circumstances of aggravation, such as to render the prisoner deserving of a more severe punishment than they are competent to inflict. Reg. VI. 1829, sect. 2, cl. 3.

Persons belonging to a wandering gang of thieves, how punishable.

4206. Whoever is proved to have belonged, either before or after the passing of this Act, to any wandering gang of persons associated for the purposes of theft or robbery, not being a gang of thugs or dacoits, is to be punished with imprisonment with hard labor for any term not exceeding seven years. Act XI. 1848, sect. 1.

4207. These provisions apply to cases of theft and burglary only. Reports *L. P.* 1852, part 1, page 893.

Such persons may be committed by any magistrate and tried by any sessions court.

4208. Any person accused of the offence of belonging to any such gang as aforesaid, or of the offence of unlawfully and knowingly receiving or buying property stolen or plundered by any such gang, may be committed by any magistrate within the territories of the East India Company, and may be tried by any court which would have been competent to try him if his offence had been committed within the zillah where that court sits. Act XI. 1848, sect. 2.

No futwa to be taken in such case.

4209. No court is, on the trial of any offence under this Act, to require any futwa from any law officer. Act XI. 1848, sect. 3.

Power of session judge.

4210. Persons committed by the magistrate under the above provisions, if convicted on trial before the sessions court, are liable to the penalties prescribed for the offences in question by cls. 2, 4, 5, and 7, sect. 8, Reg. XVII. 1817. Reg. XII. 1818, sect. 3, cl. 2.

Cases of robbery, burglary, or theft, attended with murder.

4211. Persons convicted of murder in prosecution of robbery, burglary, or theft, as in all other cases of wilful murder, are liable to a sentence of death by the nizamut adawlut under the laws and regulations in force which are applicable to such cases. Reg. XVII. 1817, sect. 8, cl. 2.

Cases of burglary, theft, or robbery, attended with attempt to murder, or corporal injury endangering life.

4212. In all cases of burglary and theft, or of theft without burglary, whether in a house or from the person of another, as well as in all cases of robbery, not within the provisions of the regulations in force for the punishment of robbery by open violence; if the robbery, burglary, or theft, or an attempt to commit the same be accompanied with an attempt to commit wilful murder, whether by wounding, burning, strangling, poisoning, drowning, throwing into a well, or by any other means; or be accompanied with wounding, burning, or corporal injury to any person or persons, in such degree as to endanger life; the offender or offenders who are convicted to the satisfaction of the nizamut adawlut of having been concerned, as principals or accomplices, in a robbery, burglary, or theft, or in an attempt to commit the same, attended with such aggravated criminality, are liable to the same punishment as that prescribed for robbery by open violence; viz. imprisonment and transportation for life.—The trial in all such cases is to be referred by the sessions court to the nizamut adawlut; and the session judge, before whom the trial is held, is to proceed as directed in sect. 4, Reg. VIII. 1808,* and other regulations in force, respecting prisoners who are liable to a sentence of imprisonment and transportation for life. If the session judge is of opinion that there are grounds for a mitigation of the prescribed punishment, he is to state the same for the consideration of the nizamut adawlut. Reg. XVII. 1817, sect. 8, cl. 4.

Such trials must be referred.

*v. para. 4139n.

Construction of preceding rules.

4213. This provision is not applicable to a case in which death has ensued. Reports *W. P.* 1853, part 1, page 193. But if the violence used has not resulted in death, however clear may be the intention to kill, a capital sentence cannot be passed. Reports *L. P.* 1855, part 2, page 971.

In such cases, if the futwa convicts, even on presumption, the judge must pass the prescribed sentence, and refer the trial.

4214. A futwa convicting on strong presumption (*zann-i-ghalib* or *shubha-i-kawi*) is a futwa of conviction; and a session judge concurring in such conviction in a case of burglary or theft attended with murder, or wounding or corporal injury endangering life, must proceed, as prescribed above, to pass sentence of imprisonment and transportation for life, and refer the trial for the final orders of the nizamut adawlut, suspending the issue of his warrant for execution of his sentence until the final orders of that court be received. Const. No. 558, para. 2.

Example of such case.

4215. Where the prisoners, in a case of burglary and theft, took the prosecutor's child, aged about one year, from its bed and left it in the adjoining garden, it was held to be a case of burglary attended with corporal injury in such a degree as to endanger life, and as such necessarily referrible to the nizamut adawlut under the above provisions. N. A. R. vol. 4, page 284.

All cases of administering *poisonous* drugs with intent to rob come within the above provisions;

4216. All cases of administering *poisonous* drugs to persons, with a view to robbing them while in a state of insensibility, come within the provisions of cl. 4, sect. 8, Reg. XVII. 1817; and the session judge must pass sentence of imprisonment in transportation for life, and refer the case, if the prisoners are convicted, for the final sentence of the nizamut adawlut, whether death ensues or otherwise. C. O. No. 291 of vol. 1. Const. No. 365. N. A. R. vol. 3, page 333.

and may be tried by the thuggee judge.

4217. As thuggee officers are vested with magisterial powers with respect to the specific crimes of thuggee and poisoning, so persons committed on a charge of poisoning may be tried by the session judge specially appointed for the trial of thugs. Const. No. 1107.

If persons accused of robbery and murder appear to have been engaged in a systematic combination for such purposes, they are to be made over to the thuggee officers.

4218. Persons accused of robbery and murder, or of either of those crimes, under circumstances justifying a suspicion that the crimes have been perpetrated by persons engaged in a systematic combination for such purposes, are to be made over to the assistant to the general superintendent for the suppression of thuggee, who will commit the persons so transferred to be tried before the special session judge for the trial of thugs, and will make investigations as to the existence of combinations of the kind described with a view to the suppression of the offences to which they give rise. [This order was circulated in the Behar districts only, but appears applicable to all the provinces.](a) C. O. No. 92 of vol. 3. *L. P.*

Cases of administering *intoxicating* drugs with intent to rob do not come within the above provision.

4219. The above rule is applicable only to the crime of administering *poisonous* drugs to persons, with a view to robbing them when in a state of insensibility; and does not include the offence of administering drugs and substances of a merely *intoxicating* character, and not of a nature to endanger life, for the purpose recited; consequently those cases only are referrible to the nizamut adawlut, in which the prisoners are accused and convicted of having administered *poisonous* drugs. C. O. No. 64 of vol. 3. N. A. R. vol. 5, page 121.

Form of indictment for administering poisonous or intoxicating drugs with intent to rob.

4220. In such cases an indictment is defective, if the name only of the drug used be given, and its designation of poison be not specifically adduced. Such indictments therefore are to be worded simply "administering poison or poisonous drugs with intent," &c., or "administering intoxicating drugs with intent," &c. (according as either of the above

(a) The following extract from a letter of the superintendent of police was annexed to the above order: "I have no doubt however but what a combination exists along the lines of road frequented by travellers, pilgrims, &c., for robbery by this atrocious method; and that the dâk bearers, petty modis at the halting places, bhatiaras and common thieves, are concerned in it. I also think that it is carried on to a greater extent than is officially known, or generally suspected; and that many of the travellers, whose corpses, at the times of pilgrimage to Gyah or Hurri Chetra, are found by the roadside or at halting places, have met with their deaths from such means. The roads are so inadequately protected without any patrol, that there is always an opportunity for such a crime almost without a chance of discovery." The same officer has also recorded the following remarks: "The crime of theft by administering stupifying drugs is becoming, I am sorry to observe, common in these provinces, and Major Sleeman reports the same in that part of the country over which he has the chief police charge. It is safer than common theft, as the mithaiwala has time to get off; and it is only from accidental circumstances that any clue is found or the party apprehended. The drugs administered are all stupifying; if the dose taken is large, they cause death; if small stupefaction, not in my opinion intoxication. The mithaiwala mixes the drug by chance, and leaves his victim to recover or die, as the chance may be; and I think a heavier punishment than six or seven years' imprisonment should always be given to this class of offenders; and I would never give less than imprisonment for life, as such men should (like the thugs) not be allowed again to be at large to the injury of the community. That death does not ensue in every case is not the fault of the mithaiwalas administering the drug in food or water; it arises from the merest chance, whether the stomach of the receiver is full or empty, the victim robust or weak, or the quantity of mixed food swallowed before the effect of the drug appears; and it is, I think, a mistake to charge this class of miscreants with administering *intoxicating* drugs where the parties recover, when they are always *poisonous* drugs dependent for their final effect on the quantity which the victim may swallow, or other circumstances, not on any designed will of the administerer." *Police Report of Sup. Pol. L. P. for the first six months of* 1841, *para.* 123.

rules applies to the case), the article given, whether dhutoora or other substance, being adduced in the evidence in support of the charge. C. O. No. 83 of vol. 3.

The following rule does not apply if the drugs are only intoxicating.

4221. The provisions of cl. 5, sect. 8, Reg. XVII. 1817 are not applicable to cases of "administering intoxicating drugs and theft." Const. No. 1324.

Cases of robbery, burglary, or theft, attended with corporal injury not endangering life.

4222. In cases of conviction before the sessions courts of any offences specified in the preceding clause, wherein the robbery, burglary, or theft, or an attempt to commit the same, has not been accompanied with an attempt to commit murder; nor with wounding, burning, or other corporal injury, in such degree as to endanger life; but has been attended with wounding, or other corporal injury, in a less degree, the session judge, provided he concurs in the conviction of the offender, is without reference to the nizamut adawlut to adjudge him to suffer such punishment, as appears adequate to the offence, not exceeding the sentence which the sessions courts are authorized to pass in cases of burglary by cl. 1, sect. 3, Reg. I. 1811; viz. stripes [now commutable to two years' additional imprisonment] and imprisonment for 14 years in banishment from the district where the prisoner has resided. Reg. XVII. 1817, sect. 8, cl. 5.

Restriction of the above rule.

4223. Nothing in the above clause is to be construed to authorize an enhancement of the penalties declared by the regulations in force for burglary, or theft, when not accompanied with wounding, or other corporal injury, nor with an attempt to commit murder by strangling, or other means, as described in cl. 4 of this section. Reg. XVII. 1817, sect. 8, cl. 6.

Provisions regarding robbery by open violence, are not applicable to other cases of theft or robbery without violence. Rules for guidance of courts in such cases.

4224. No part of the preceding section [which contains the penalties prescribed for the offence of gang-robbery] is to be considered applicable to secret theft, or larceny without open violence (*sariha-i-sughra*), whether accompanied with burglary (*nakb-zani*), or simple theft from the person or house, unaccompanied with any aggravating circumstance. In such cases the Mahomedan law, with the modifications of it in existing regulations, and the rules contained in sect. 2 of this regulation*, when the prisoner is declared liable to discretionary punishment, is to govern the sentences of the sessions courts; as well as of the nizamut adawlut in any cases referred to that court. Reg. LIII. 1803, sect. 5, cl. 1.

* *v. para.* 1307 *et seq.*

Explanation of the above provision.

4225. It is hereby declared, in explanation of the above provision, that the reference therein made to the Mahomedan law in cases of theft was not intended, and is not to be considered, to preclude the sessions courts from adjudging stripes [now commutable to two years' additional imprisonment] in addition to imprisonment not exceeding seven years, when such punishment in aggravated cases of theft appears just and proper. Reg. XVII. 1817, sect. 8, cl. 7.

Punishment of watchmen or police

4226. The explanation contained in the two clauses of sect. 5, Reg. LIII. 1803,(*a*) respecting the distinction to be observed in cases of secret theft, or larceny without open

(*a*) One of these clauses is given above; the other declared murder, wounding, or other personal injury, and any other criminal acts of violence, done in prosecution of an original intention to commit theft, liable to the same punishment, as is specified in the preceding section, for the same acts of criminality committed in prosecution of robbery by open violence. Clause 2 is repealed by Reg. XVII. 1817, and the provisions given above enacted in its stead.

sentenced to imprisonment for life; *N. A. R. vol.* 2, *page* 264:—where the prisoners were charged with administering a deleterious drug to some travellers in food, from eating which death ensued, and with robbing them while insensible from the effects of the poison; the nizamut adawlut were not satisfied with the evidence to the alleged murders, and convicting the prisoners of having been concerned in highway robbery only, sentenced them to stripes and transportation for life; *N. A. R. vol.* 1, *page* 320. Where a prisoner, alone and unarmed, was convicted of highway robbery accompanied with only slight personal violence, he was sentenced to imprisonment for seven years; *N. A. R. vol.* 2, *pages* 23 *and* 53; and, in another case, to stripes and imprisonment for five years; *N. A. R. vol.* 2, *page* 172. A prisoner convicted of suddenly snatching a necklace from a boy on the highway, without previous intimidation or act of violence, was sentenced to imprisonment for three years; *N. A. R. vol.* 1, *page* 269.

with personal violence;

without aggravation.

Administering poisonous or deleterious drugs in prosecution of theft; death ensuing;

4231. In cases of administering poisonous or deleterious drugs in prosecution of theft where death ensued and the prisoner buried the body in her own house, she was sentenced to death; *N. A. R. vol.* 1, *page* 137:—but where, although death ensued, it appeared that the intention of the prisoners was rather to produce a temporary state of insensibility than to cause death, they have been sentenced to imprisonment for life; *N. A. R. vol.* 1, *pages* 149, 216, 229; *vol.* 3, *page* 227; *and vol.* 4, *page* 105. In cases in which death has not ensued,—where the prisoner was convicted in two cases of administering the seeds of dhutoora, and stealing the property while the owners were in a state of insensibility induced thereby, and she was an old offender, she was sentenced to imprisonment for life; *N. A. R. vol.* 1, *page* 368:—and in a similar case, where the prisoner was convicted in three separate instances, he was sentenced to stripes and imprisonment for life in Alipore jail; *N. A. R. vol.* 2, *page* 140. And when the prisoner admitted that he had for twenty years been making his livelihood by such practices, he was sentenced to transportation for life; *N. A. R. vol.* 6, *page* 201. On conviction of a single offence, the sentence has been for stripes and imprisonment for 14 years; *N. A. R. vol.* 3, *page* 333; *and vol.* 4, *page* 217:—and where the robbery was not effected, the prisoner has been sentenced to imprisonment for eight years; *N. A. R. vol.* 2, *page* 359:—and for seven years; *N. A. R. vol.* 3, *page* 21.

death not ensuing.

SECTION IV.

OF BURGLARY.

Definitions.

What constitutes the offence of burglary.

4232. The magistrates are to be guided by the following rules, whenever individuals are apprehended and brought before them on a charge of having committed the offence of breaking into, or attempting to break into, a dwelling house, tent, boat, or other place of habitation, by night or by day, with an intent to steal (but without open violence, such as to constitute the crime of robbery by open violence); or with the offence of breaking into,

or attempting to break into, any ware-house, store-house, or other building or place used for the custody or preservation of property, either by night or by day, with intent to steal (but without open violence); or of being present aiding and abetting in the commission of any of the offences above specified; or although not present of having procured or caused the perpetration of any of those offences by hire, counsel, or command, or of having in any manner confederated with the actual perpetrators of them in pursuance of a preconcerted plan. Reg. XII. 1818, sect. 2, cl. 1.

Mode of entry.

4233. The entering into a dwelling-house with intent to rob by lifting a door off its hinges, is burglary; as is also an entry by lifting the straw-thatch, after loosening the strings or fastenings: but entering a door left open, or climbing over an outer wall, unless followed by a burglarious entry into the house, does not amount to burglary. *N. A. R. vol.* 1, *page* 270.

Immaterial, whether the offence is by day or by night.

4234. In cases of burglary, it is immaterial whether the offence has been committed by day or by night; but the magistrate should take into consideration the time when the act was committed as one among the circumstances of the case, which are to guide his judgment in apportioning the degree of punishment suited to the offence. Const. No. 299.

Distinction between burglary and dacoity.

4235. In trials for burglary attended with violence, it should always be specified in the charge, whether the violence was simultaneous with or subsequent to the entry, as in the former case the crime is dacoity. *N. A. R. vol.* 3, *page* 271.

Commitment and penalties.

Cases which *must* be committed.

4236. If the perpetration of any of the offences enumerated in the preceding clause not amounting to the crime of robbery by open violence, is accompanied with murder, or with an attempt to commit murder, or with wounding, burning, corporal injury, or other aggravating act of personal violence; or if the prisoners, or any of the prisoners concerned in the offences described in the preceding clause, appear to have been before convicted of burglary, robbery, or other heinous crime; or if the prisoners or any of them appear to be persons of notoriously bad character, or are charged with having committed the offence while employed in the office of watchman, guards, or police officers, as described in sect. 4, Reg. III. 1805*; or if the value or amount of the property stolen exceeds the sum of 100 rupees†; in all such cases it is the duty of the magistrate to commit the whole of the prisoners, who appear from the evidence adduced to have been concerned in the offence, to take their trial before the sessions court. Reg. XII. 1818, sect. 2, cl. 2.

* *v. para.* 4146.

† *v. paras.* 4183 *and* 4184.

Previous conviction of theft of 10 rupees is not a conviction of a heinous offence.

4237. A previous conviction of petty theft, not exceeding ten rupees, when unattended with any aggravating circumstance, is not to be deemed a previous conviction of a heinous crime, such as precludes the magistrate's judicial cognizance of a charge of burglary, and requires that the prisoner be committed for trial before the sessions court. Reg VI. 1824, sect. 5.

Previous offence must be of the same or similar nature.

4238. This refers only to offences against property, and does not include, under the term "before convicted, &c." a conviction for offences of a class and nature entirely different from those for the punishment of which this regulation provides. Thus, a previous conviction for culpable homicide does not necessitate commitment. Reports *L. P.* 1854, part 1, page 28.

If the burglary is perpetrated by a police officer, or watchman, even of another village, the case must be committed:

4239. Under the terms of the above provision, any person charged with having committed the offence of burglary, while employed in the office of watchman, guard, or police officer, against whom there appears sufficient evidence, must be committed to the sessions: and the fact of his being the chokeedar of a different village from that in which the burglary was committed, is immaterial as regards the commitment; though it would be considered in passing sentence, as it is unquestionably an additional aggravation that the property stolen was under the special protection of the thief. Const. No. 374.

and this applies to private watchmen entertained by individuals as well as to those in the public service.

4240. Under the terms of cl. 6, sect. 11, Reg. XIV. 1807 [*para.* 2010] and cl. 9, sect. 21, Reg. XX. 1817 [*para.* 2179], "private watchmen, entertained by individuals for guarding their houses, shops, or other premises" within the towns or villages, where the darogahs of police or officers of outposts are stationed, and within the kotwali jurisdiction, are to be considered subject to the orders of the police officers, and are required to act in concert with them. And by cl. 4, sect. 12, Reg. XIV. 1807 the provisions of cl. 6, sect. 11 of the same regulation are declared applicable to all such private watchmen within the towns, gunjes, or other places forming part of any mofussil police jurisdiction. It follows therefore, that private watchmen, of whatever denomination and by whomsoever entertained, are "required by the regulations to assist the police officers in preventing robbery or other crimes and in apprehending offenders;" and that being thus in the same category with the chokeedars and others, described in sect. 4, Reg. III. 1805†, they come within the intent and meaning of the rule contained in cl. 2, sect. 2, Reg. XII. 1818, and must be committed to the sessions court if implicated in a burglary. C. O. No. 5 of vol. 4.

† *v para.* 4146.

Previous conviction of cattle stealing necessitates commitment.

4241. A magistrate is not competent to pass sentence on a prisoner convicted of burglary, who has been previously convicted of cattle stealing; but must commit the case to the sessions. Const. No. 1273.

Cases which *may* be committed.

4242. In modification of cl. 2, sect. 2, Reg. XII. 1818, the magistrates are hereby declared to be empowered to commit for trial to the sessions court any person charged with the offence of burglary, whenever they are of opinion, that there exist any circumstances of aggravation (though not of the nature specified in the clause above quoted) such as to render the prisoner deserving of a more severe punishment than the magistrates are competent to inflict. Reg. VI. 1824, sect. 3.

Magistrate *may* commit under *any* peculiar circumstances; but those circumstances must be stated. and the judge also is to note them in his abstract statement.

4243. A magistrate is not bound to dispose of a case of burglary, although within his competency; but may commit the offenders to take their trial before the sessions court, should *any* peculiar circumstances in the case induce him to consider this course of proceeding preferable: but in such case it is incumbent on him to state, in his roobakaree of commitment, the express circumstances of aggravation, which have led him to commit the case, instead of disposing of it himself. The session judge is to furnish the same information in the abstract statement of sentences passed without reference. Const. No. 391, para. 5. C. O. No. 239 of vol. 1.

Judge how to proceed if the magistrate makes an

4244. In the event of a commitment being made by a magistrate, by error or negligence, in a case which, under the above provisions, he might have disposed of himself, the

session judge should try and decide the case, not exceeding (if the prisoner be convicted) that measure of punishment which it would have been competent to the magistrate to award, had he himself disposed of the case; and reporting (where he sees sufficient ground) the magistrate's mode of proceeding to the nizamut adawlut for their orders, or contenting himself with recording in his final proceeding or otherwise a caution to the magistrate against making unnecessary commitments in future.* Const. No. 301, and No. 391 para. 6.

unnecessary commitment.

*But see para. 1059.

4245. If from the investigation held by the magistrate there appears reason to believe that a prisoner apprehended and brought before him has been guilty of any of the offences described in the first clause of this section, but that such offence has not been attended with any of the circumstances of aggravation specified in the second clause of this section, the magistrate is, in addition to the evidence which is adduced on the part of the prosecution, to take the defence of the prisoners and the evidence of the witnesses who are designated by the prisoners in support of their defence; and after a full and deliberate investigation is to proceed, without reference to the sessions court, to pass sentence of acquittal or conviction. Reg. XII. 1818, sect. 2, cl. 4.

Magistrate how to proceed if he considers it unnecessary to commit the case.

4246. If the prisoners are convicted, the magistrate is empowered to sentence them to imprisonment with hard labor for a period not exceeding 2 years, and to corporal punishment [now commutable to additional imprisonment for one year], and to carry such sentence into immediate execution. Reg. XII. 1818, sect. 2, cl. 5.

Power of magistrate.

4247. Any person upon whom the instrument denominated a *sindh-kati*, used for the known purpose of *nakbzani*, is found, is to be detained by the magistrate in safe custody, and employed to work on the public roads until he gives security for his future good conduct, or until the session judge (before whom the magistrate is to lay his proceedings) on revision of those proceedings, directs the discharge of the prisoner on a muchalka. Reg. I. 1811, sect. 6.

Persons found with a *sindh-kati* to be required to give security.

4248. Whenever a prisoner is charged before a magistrate or joint magistrate with two or more distinct offences, for neither of which he has been previously brought to trial, but for each of which he would be subjected on conviction to the penalty prescribed by cl. 5, sect. 2, Reg. XII. 1818, the magistrate is to refrain from passing any sentence until he has completed his proceedings in both cases. Reg. VI. 1824, sect. 2, cl. 1.

Magistrate how to proceed if prisoner is charged with two distinct offences;

4249. Should the prisoner be convicted of two or more of the offences charged, the magistrate is authorized to reduce the punishment so as not to exceed in the aggregate stripes [now commutable to additional imprisonment for one year] and imprisonment for the term of two years, provided he is of opinion, on consideration of the several acts of criminality established against the prisoner and the circumstances of each case, that the punishment above specified is sufficient. Reg. VI. 1824, sect. 2, cl. 2.

and what amount of punishment he may award:

4250. If however the magistrate is of opinion, that the prisoner is deserving of a more severe punishment than that above specified, he is to refrain from passing any sentence, and is to commit the prisoner to take his trial before the sessions court for each offence. Reg. VI. 1824, sect. 2, cl. 3.

but he may commit if he thinks it necessary.

Power of session judge

4251. In cases of conviction before the sessions court of individuals charged with any of the offences specified in cl. 2 of this section, the session judge is to be guided by the rules contained in sect. 8, Reg. XVII. 1817*; referring such cases, as come within the provisions of cl. 2 and cl. 4 of that section, to the nizamut adawlut ; and in all other cases, not coming within the provisions of those clauses, sentencing the prisoners to suffer such degree of punishment, as on a consideration of all the circumstances of the case appears adequate to the offence, not exceeding however in any instance stripes [now commutable to 2 years' additional imprisonment] and imprisonment with hard labor for 14 years, with or without banishment from the district in which the prisoner has resided. Reg. XII. 1818, sect. 2, cl. 3.

* *See paras.* 4211 *et seq.*

The rules regarding the power of the session judge in cases of theft apply equally in cases of burglary.

There is no minimum of sentence prescribed to the session judge.

4252. Under the discretion vested in the sessions courts by the above provisions, those courts may mitigate the punishment to below three years' imprisonment, and to such degree as they judge proper. Const. No. 299 para. 3.(*a*)

If the burglary is attended with murder, sentence of death may be passed

4253. Should any person, in the commission of, or in the attempt to commit, any species of burglary as described above, kill another, the offender is to be adjudged to suffer death, as well as all persons found guilty of aiding and abetting therein. Reg. I. 1811, sect. 3, cl. 4; and sect 4.

Precedents.

Attended with murder,

4254. Where the prisoner has committed murder in the prosecution of burglary, he has been sentenced to death; and in one case an accomplice in the burglary who was not actively concerned in the murder was sentenced to imprisonment for 14 years: *N. A. R. vol.* 1, *page* 7; *vol.* 4, *page* 277; *and vol.* 5, *page* 23.—Where three persons were concerned

with wounding which proved fatal,

in a burglary attended with wounding which proved fatal, the one who stood by while the burglary was committed, and afterwards inflicted the fatal wounds, was sentenced to imprisonment for life in Alipore jail; the second, who actually committed the burglary, but ran off before the wounds were given, was sentenced to imprisonment for 14 years; and the third, who also stood by during the commission of the burglary and then ran off before the wounds were given, to imprisonment for 7 years; capital punishment was remitted "under all the circumstances of the case," but the motive for leniency may perhaps have been that the wounds were inflicted in return for blows and in a struggle between the deceased and the prisoner, and that they did not show an intent to kill; *N. A. R. vol.* 4,

with violence endangering life,

page 87. Where a prisoner in committing a burglary took the prosecutor's child out of his house, and after stripping it of its ornaments left it in a garden adjoining, and thereby endangered its life, he was sentenced to imprisonment for 10 years; another prisoner, convicted of knowingly receiving part of the stolen property, to 7 years' imprisonment; and a third convicted of privity to the theft to imprisonment for 3 years; *N. A. R. vol.* 4,

with wounding;

page 284. Where the two prisoners were discovered in the act of undermining the wall of a dwelling house, and one of them wounded with a sword one of the persons who apprehended them, they were sentenced to stripes and imprisonment in banishment for 14 years;

(*a*) This construction also declares that the provisions contained in cls. 1, 2, and 3, sect 8, Reg I 1811, and in cls. 2, 3, 4, and 5, sect. 2, Reg. XI. 1814 (for the punishment of cases of burglary) are virtually superseded by the provisions of Reg. XII. 1818.

unaggravated.

N. A. R. vol. 1, *page* 243. Before the enactment of Reg. XVII. 1817, and Reg. XII. 1818 unaggravated cases of burglary were punished with stripes and imprisonment for 14 years; *N. A. R. vol.* 1, *pages* 250, 255, *and* 262:—and where three prisoners broke into a cow-house at night and carried off the cattle therefrom, they were sentenced to stripes and imprisonment for 7 years; *N. A. R. vol.* 1, *page* 286. A chokeedar, convicted of burglary in a mahalla other than his own, was sentenced to stripes and imprisonment for 4 years; *N. A. R. vol.* 4, *page* 194. Where a prisoner was convicted of burglary and intent to steal unaccompanied with any aggravating circumstances, and sentenced by the judge of circuit in consideration of his notoriously bad character to stripes and imprisonment in banishment for 14 years, the nizamut adawlut reduced the term to 7 years, as it did not appear that the prisoner though of bad character had ever before been convicted of a specific offence; *N. A. R. vol.* 2, *page* 400. A prisoner convicted of being an accomplice in an attempt to commit burglary was sentenced, as a hardened offender, to stripes and imprisonment for 5 years; *N. A. R. vol.* 4, *page* 107.

Case of a chokeedar.

Prisoners notorious offenders.

SECTION V.

OF THE MAHOMEDAN LAW OF SARIKA.(a)

Definition of the term.

4255. The legal meaning of sarika is defined to be, a sane and adult person wrongfully and furtively taking the undoubted property of another, such property being in due custody and of the value of not less than ten dirms (or rather more than three rupees). The furtive or clandestine taking, in cases of highway robbery, is explained to refer to the imam, or chief magistrate, whose province it is to guard the highways by means of his assistants; in cases of private larceny, it respects the individual proprietor or his representative. When the offence is committed at night, it is sufficient to constitute larceny, that it was commenced secretly,—as where the thieves, having effected a secret entrance into a house, carry off the property by open violence,—because at such a time it is difficult to obtain assistance; but in the day-time, when aid is readily procured, the secrecy must be continued throughout, and it is not larceny, if property obtained furtively is openly taken away. The custody requisite to constitute the crime is of two kinds,—of place,—and of person. Custody of place (*hirz bil makam*) is when the property is in a house, or other receptacle generally used for preserving property; and there must be a taking away from such place. Custody of person (*hirz bil hafiz*) is when the property is within sight of the possessor, whether on a road or plain, and whether the keeper be asleep or awake: the crime is complete, if the property be seized by the robber, though it be not carried away;

Furtive taking.

If by night, the offence must have commenced secretly; if by day, the secrecy must be continued throughout.

The requisite custody is of two kinds,—of place,—and of person.

(a) I am indebted for nearly the whole of this section on Mahomedan law to Mr. Harington's Analysis, vol. 1, pages 273 *et seq.*

and the personal custody is perfect, whether the possession of the property by the holder be absolute and permanent, or delegated and temporary.

The object which the Mahomedan law has in view.

4256. In cases of robbery, the Mahomedan law has two objects in view—one, the punishment of the offender, which is so severe that every facility is afforded to avoid its infliction; the other, the restoration of the property, to effect which various provisions of the law directly tend, and which does not take place if the prescribed punishment be inflicted.

Charge may be established by confession, or evidence.

4257. A charge of theft may be established by confession, or by the testimony of two male witnesses; but the kazee may advise the thief not to confess. If a confession be retracted, the infliction of specific punishment is stayed; but it does not prevent the restoration of the property. A confession of theft committed on an unknown person is insufficient for conviction. Where several persons confess to a joint theft, and half of them retract, the remainder cannot be convicted on their confession alone. And conviction cannot be had upon a confession of stealing property, part of which is declared by the person robbed to belong to the thief. The absence of accomplices indicated by the prisoner confessing is not sufficient to bar conviction. Where the evidence is insufficient for conviction, and the accused denies the charge, he may be required to exculpate himself on oath; and, if he refuses to do so, may be made answerable for the property stolen, but is liable to no further punishment. It seems doubtful whether the imam may chastise an accused person, whom he suspects of having the stolen property in his possession, in order to compel the restitution of it. The kazee is directed to be particular in his examination of the witnesses, as to time, place, and circumstances; as well as respecting the value of the property stolen, if it be not produced in court; and he is enjoined to ascertain their credit, if it appear doubtful. If the accused is a Mahomedan, the witnesses to prove the charge against him must be of the same persuasion; and if two infidels depose to a theft jointly committed by a Mahomedan and an infidel, their evidence is insufficient to convict either. If two witnesses accuse one person of theft, and two more depose to its commission by another person, neither can be convicted on their evidence, though the party robbed should charge one of them. A parole confession made before private individuals is insufficient, if the accused does not admit it. Nor is it sufficient, unless the confession expressly declares that the property was stolen: and both the prosecutor and witnesses are permitted to use terms in their depositions, which may secure the right of property to the owner without subjecting the party accused to the punishment of theft; the reason of which is that a prisoner, who has suffered the prescribed punishment, cannot be called upon to restore the stolen property.—The legal penalty for a first offence is amputation* of the right hand; for a second offence, amputation of the left foot: if the crime is further repeated, the criminal may be imprisoned until he repent, or for life; or, in cases requiring exemplary punishment, he may be put to death.

If there is neither confession, nor evidence, the accused may be required to exculpate himself on oath.

Rules for taking evidence.

Religious persuasion of witnesses.

Contradiction in evidence.

Extra judicial confession.

Particular terms required to make the proof sufficient.

Penalty.

* *For commutation of this penalty under regulation law, see para.* 1279.

Circumstances in regard to the ownership of the goods, or the mode of taking, which

4258. "A person stealing the property of his father, mother, or any of his ancestors; or the property of his son, or any of his descendants; is not liable to amputation; because such kindred are considered to have a mutual right of usufruct in the possessions of each

other, as well as to hold a joint custody thereof for reciprocal benefit. For the latter reason also amputation is not incurred for stealing the property of any relation within the prohibited degrees, unless it be taken from a stranger's house, in which case there is a violation of custody; nor is it due for stealing the property of a stranger from the house of such a relation. A husband, or wife, stealing the property of each other, or a slave stealing the property of his master,(a) or mistress, or of his master's wife, or the husband of his mistress, is not liable to amputation; because the thief, in such instances, is at liberty to enter the house, or apartment, of the proprietor; and with respect to man and wife, although they may have distinct places of custody, they possess a mutual usufructuary right in the property of each other. In like manner a master stealing the property of his slave for whom a ransom is stipulated, or whom he has licensed to trade, is not subject to amputation; unless, in the latter instance, the slave have contracted a debt, in which case his property is considered to be in pledge for his creditor. Amputation is not incurred for stealing property out of a public bath, or from a house of general resort, in the day-time; when the custody of such places is questionable: but for thefts in the night-time, when strangers are not allowed ingress, the prescribed penalty is to be inflicted. If a guest steal the property of his host, he is not liable to amputation; as he has been allowed to enter the house; and his offence is considered to be rather treachery than theft: nor is a servant subject to the stated penalty for stealing the property of his employer out of an apartment to which he is allowed access. In cases of burglary, if a thief break through the wall of a house, enter and take property, and be seized before he has carried it out of the house, amputation is not incurred; nor is it, if he give the property, at the entrance of the breach, to an accomplice standing without; because the thief who enters the house does not carry out the property, which, previously to his coming out of the house, falls into the possession of another; and the thief who receives and takes away the property has not committed any violation of custody: the whole of the conditions of theft therefore are not found in this instance.* But if the thief, who enters the house, throw the property out upon the highway, through the hole made by him, and then take it away, his hand is to be cut off, according to the opinion of Aboo Yoosuf; from whom it is further recorded that, if the thief within the house put his hand entirely through the breach, and thus deliver the property to the accomplice without, the former is liable to amputation; as both are, if the thief without put his hand through the breach into the house, and thus take the property from the other within. The principle which governs the latter case applies also where a party of thieves enter a place of custody, and some take away the property, whilst the others stand by; for then the whole incur amputation, as in robbery by open violence, because the accomplices are ready to aid the perpetrators, and are therefore concerned with them in committing the offence. But according to the *Záhir oo' rawáyát* the violation of custody must be completed by the entrance of the thief into the place of custody, whenever this may be practicable; and therefore if a person

prevent the infliction of the legal penalty.

So, in cases of burglary.

* *N. A. R. vol.* 1, *page* 250.

(a) But he is liable to discretionary punishment for breach of trust. N. A. R. vol. 1, page 233. And it seems that in all cases, in which the prisoner though guilty is not liable to amputation, discretionary punishment may be awarded.

make a breach in the wall of a house, put his hand through, and take out property, without entering the house, he does not incur amputation. If a thief break a hole in a house, and go away, and the owner of the house, though he observe the hole, or though it be visible to passengers, omit to close it; and the thief return another night, and take property from the house; amputation is not incurred: nor is it for two or more successive thefts, each of less than ten dirms, if the owner, after being advised of the first theft, neglect to repair the breach: but if the owner be not advised, the value of the several thefts may be computed collectively. If a person keep his money tied in his sleeve in such a manner that the knot containing it is within the sleeve, and a cut-purse steal it by putting his hand under the sleeve, and tearing away the part which contains the money, he is liable to amputation; as he also is if the knot be tied on the outside, and on being opened the money fall within the sleeve, and is taken from thence by the thief: but if the knot be on the outside and torn away; or on the inside, and opened from without, the penalty is not incurred; the interior part of the sleeve, which is considered the place of custody, not being violated in the two latter instances. If a person steal one of a string of camels, or a load from one of them, he is not liable to amputation, from a doubt whether the camel be in legal custody; unless there be a guard (exclusive of the driver, or rider) for the express purpose of watching the camels, in which case the penalty is incurred; as it also is, if the thief break open a package, and take away its contents, whilst under personal custody. If some of a party of travellers steal the property of others, at their lodging place, though watched by the owners, the thieves are not liable to amputation; the lodging place being common. If a person enter a house by unlocking the door with a false key in the day-time, and take away the effects when no person is present, he is not subject to amputation: but if any of the family be in the house and not privy to the theft, the prescribed penalty is incurred. In like manner, if the door be open, and the thief enter by day, and steal, he is not liable to amputation: but if the door be shut, though not fastened, and he enter clandestinely and take away property, it is stated in the *Hávi* that he incurs the penalty of theft: as he also does if he enter the house at night, and take away property either by stealth or force, after the hour of evening prayer; unless his entering the house be known, at the time, to the owner. It is further stated in the *Hávi*, that if a herd of kids be collected in a fold, and one or more of them, to the value of ten dirms, be stolen from the enclosure, amputation is incurred, whether the owner be present or not. But for cattle stolen from pasture ground the penalty of theft is not due, unless there be a watchman with them, for the express purpose of guarding them."

So, as regards the completeness or otherwise of the custody.

So, as regards other circumstances

4259. "A breach of trust does not incur amputation; as the article entrusted is not in custody of the proprietor. Nor is it incurred by openly seizing or snatching away a thing, as such an act is not theft; and the prophet has said that "the hand of a plunderer, or snatcher of property, or of a trust-breaker, is not to be cut off." A *nabbásh*, or stealer from the dead, viz. of a winding-sheet, or other apparel of the dead, is also not liable to amputation, according to Aboo Huneefah, and Imam Mahomed; though Aboo Yoosuf and Shafei maintain that he is. If a person steal property of which he is in part owner, he is not subject to amputation. And on the same principle, it is not incurred by any

Mussulman stealing from the public treasury in a Mahomedan state: as every thing in it is considered to be common property of Mussulmans, and the thief has consequently a share in it. Lastly, if a creditor steal from the property of his debtor, to the amount of his debt only, amputation is not incurred; as this is deemed to be an enforcement of right, not theft." A *multakit* or finder, failing to make public advertisement of *lukta* or trove property, subjects himself to discretionary punishment; such property is considered as a trust in the hands of the finder.*

* *N. A. R. vol* 1, *page* 308.

Descriptions of property for stealing which amputation is not incurred.

4260. "Amputation for theft is not incurred on account of things which, in their original nature, were of common use, and which in their actual state are not esteemed a valuable property; such as wood, canes, grass, fish, fowls, game, brimstone, limestone, red-earth, mud, clay, dung, and similar articles; Ayeshah, the wife of Mahomed, having declared that in the prophet's time the stated penalty was not inflicted for such petty thefts; and the exemplary punishment of them is not judged requisite; besides which the custody of some of the articles specified is esteemed defective. Nor is amputation incurred for the theft of things which quickly spoil and decay; such as milk, flesh, and fruit (excepting dried dates, or other fruit kept in store); the prophet having expressly interdicted it for these articles. Nor for fruit upon the tree, or grain upon the stalk; these not being considered in custody. Nor for any intoxicating liquor; which is illegal or doubtful property. Nor for a drum, or other musical instrument of small value, and used for amusement only. Nor for a koran, though ornamented; as the custody of it is on account of its contents, not for the binding or ornaments; and moreover the person taking it may plead that his intention was to read it only. Nor for any other book, except a book of accounts the contents of which not being the object of the theft, the paper, and other materials of which it is composed, are deemed appreciable property. Nor for the door of a mosque, as this is not an object of custody. Nor for a crucifix, chess-board, or chess-pieces, though of gold; as the thief may excuse himself by saying that he took them with a view to destroy them, being things prohibited. Nor for stealing a free-born infant, with ornaments on his body; because a free person is not property, and the ornaments are appendages only; besides which the thief may plead that he took up the infant, when crying, with a view to appease it, or to deliver it to its nurse. Nor for stealing an adult slave; as such an act is ascribed rather to violence, or fraud, than to theft; but if an infant slave be stolen, according to Aboo Hunéefah, and Imam Mahomed, amputation for theft is incurred; but Aboo Yoosuf holds a different opinion, on the ground that a slave though considered to be property as such, is not property with regard to his original nature, as a man. Nor for a dog, or lynx; because such an animal is free by nature, and there is a difference of opinion respecting the property of them."

Further conditions in regard to the prosecution and the possession or value of the property, &c., requisite to legalize the award of amputation.

4261. "A sentence of amputation cannot be passed upon a thief, without the attendance and prosecution of the person whose property has been stolen, or his representative. The reason assigned in the Hedaya is, "because prosecution is essential to the manifestation of theft, and, with respect to this rule, it matters not whether the theft be established by confession, or by evidence; because an offence, committed against the property

of another, can in no way be rendered manifest, but by the prosecution of the aggrieved." However, besides the owner of the property stolen, a depositary, a borrower with or without interest, a hirer, an usurper, a partner in concerns of *muzárabat*, or *mustabzá*, a mortgagee, a father, or any other legal guardian, having possession of the stolen article, is declared competent to prosecute in cases of theft. If the stolen property be again stolen from the possession of the first thief, and the latter have suffered amputation, it cannot be demanded against the second thief; but if the first thief be not convicted, or have not undergone the punishment for theft, it may be enforced, at his requisition, against the second thief. If the stolen property be returned by a thief to the owner before any prosecution is instituted against him, he cannot be sentenced to suffer amputation. But this sentence is not prevented by a restoration of property after the charge is preferred, and evidence adduced in support of it. Execution of a sentence for amputation is stayed however by the gift or sale of the stolen property from the owner to the thief; whether prior or subsequent to the judgment of the kazee. Amputation is likewise stopped, if, after the sentence, a reduction in the market value of the stolen article bring it below the legal standard of ten dirms; but this principle does not apply to any other deterioration, from damage to the property, or any cause excepting a fall of price. It is declared in the Hedaya that "if, after witnesses bearing evidence to a theft, the thief plead that the article, alleged to have been stolen, is his own property, his hand is not to be cut off; although he produce no evidence in support of his plea." Shafeï justly objects to this doctrine, "that every thief has it in his power to plead the property being his own; and therefore if punishment be remitted on such a plea, the door of it must be altogether closed." But the *Hanifiya* doctors reply, that "doubt occasions the remission of punishment; and doubt is established by the plea, since it may possibly be true:" they add that Shafeï's objection is of no weight "because retraction and denial are admitted after confession, although a person confessing has it always in his power to retract and deny." But this reasoning, however applicable to confessions, when there may be no other proof, is obviously inapplicable to a case established by evidence; and Shafeï's objection to the prevalent doctrine therefore remains, as noticed by Mr. Hamilton, "altogether unanswered," or, at least, unrefuted. The same rule is applied in the Hedaya to the case of two persons confessing a theft, one of whom afterwards pleads that the property was his own. In this case, it is stated, "amputation is not inflicted upon either; because the retraction is admitted with respect to the person retracting; and this gives rise to a doubt in regard to the other person, since theft is confessed by each of them as a joint act." Evidence of a theft jointly committed by two persons, one of whom only is present and on trial, will however convict the one present, without waiting the attendance of the absentee. On a trial for theft, if the person whose property is said to have been stolen, declare, even after conviction and sentence, that the property belonged to the party accused, and was held in trust for him; or that the witnesses against him have given false evidence; or (if he have confessed) that his confession is erroneous; or make any other declaration, whereby a doubt can arise of the guilt and legal conviction of the prisoner, he is not to suffer amputation. Other cases, in

which a sentence of mutilation, or the execution of it, is prevented, are detailed in the *Futáwá-i-Aálumgiri*; but a further specification of them appears unnecessary. It will be sufficient to add, that any stolen property found in the possession of a thief must be restored to the owner; and that the latter has an option to demand the value of his property, or the prescribed punishment, previously to execution of the sentence; but after suffering amputation, the thief is not further answerable for the property. Any sale or gift of stolen property by the thief is however declared null and void. And if another person, after punishment of the thief, destroy or consume it, he is answerable to the owner for the value of it. One punishment for theft, by amputation, as in other cases of hudd, includes all past instances; but does not preclude a further punishment for any future repetition of the offence, as far as the restrictions before stated, concerning amputation, may admit of it."

Restoration of the property.

One amputation for theft includes all past instances.

4262. Sarika-i-kubra, or highway robbery, is defined to consist in a party going forth with force capable of resistance for the purpose of committing robbery; or a single person going forth with that intent prepared for resistance, under confidence in his strength and courage. There are five conditions requisite for the infliction of the prescribed penalty; 1*st.* That there be force sufficient to overcome opposition from travellers whether the robbers be armed with mortal weapons or not. 2*nd.* That the act be committed at a distance from any city, the extent of that distance being a point on which the authorities differ. 3*rd.* That the crime be perpetrated within the limits of a Mussulman state (*dar-ul-islam*). 4*th.* That all the conditions of the minor species of larceny (sarika-i-sughra) be found to exist, the robbers also being strangers to the robbed, and legally subject to punishment. 5*th.* That the robbers be seized before they repent, and before restoration of the property to the person robbed.

Highway robbery; definition, and the five conditions requisite for the infliction of the prescribed penalty.

4263. "Four descriptions of highway robbers are specified in the Hedaya, with the penalties incurred by each, upon conviction, according to their respective degrees of criminality. *First*, those who are seized before they have robbed, or murdered any person, or put any person in fear. *Secondly*, those who have committed robbery only; whether upon a Mussulman, or infidel subject. *Thirdly*, such as have perpetrated murder without robbery. *Fourthly*, such as have committed both robbery and murder. Of these descriptions, the first are to be imprisoned, until by their appearance and demeanor they show evident signs of contrition. The second are to suffer amputation of the right hand and left foot; provided the property taken be of such value, as, when divided amongst the whole of the robbers, amounts to ten dirms for each. The third class are to suffer the punishment of death; and, as it is inflicted by the right of God, for public example, and not to satisfy a private claim to kisas, the forgiveness of the heir of the slain is of no avail. With respect to the fourth and last class, it is optional with the imam, either to cut off a hand and foot, and then put them to death; or he may put them to death at once, without amputation: he may also order them to be crucified. It is further stated in the Hedaya that if a robber, in the predicament first mentioned (viz. who may be seized before he has committed robbery or murder), maim or wound a person or persons, there is no distinct

Four descriptions of robbers are specified with the penalties incurred by each.

If the robbery is attended with wounding.

specific penalty (under the provisions of hudd) for the maiming or wounding; but he is liable to retaliation, or the fine of blood, under the rules of kisas for offences short of life, at the demand of the person upon whom the offence has been committed. If the robber have both plundered and wounded, he is to suffer the penalty of amputation (as one of the second description of robbers); and neither fine nor retaliation can be demanded for the personal injury, the public punishment, as with respect to property in cases of theft, superseding the enforcement of private satisfaction. In like manner, if a robber suffer death, in execution of a sentence of hudd, nothing is due to the person robbed beyond a restitution of the property forthcoming, as already stated with respect to theft."

The whole of a gang of robbers are punishable for murder committed by any one of them. Exceptions, in this and other cases, which bar a sentence of hudd.

4264. "If any one among a gang of robbers commit murder, the whole are liable to the prescribed penalty or to discretionary punishment extending to death;* "because," says the author of the Hedaya, "the punishment is, in this instance, considered as a penalty for the assault of the whole; which is established by each of them being aiding and abetting to the others."† But if any one of the band of robbers be an infant, or a lunatic, or dumb, or a relation within the prohibited degrees of the person robbed, or murdered; or if any of the robbers have a joint interest in the property plundered; or such property be not in legal custody with respect to any one of the robbers; or if the property taken amount not in value to ten dirms for each robber; or lastly, if the person robbed or murdered be not a Mussulman, or under the permanent protection of a Mahomedan government; a sentence of hudd is prevented, against any of the party.‡ This sentence is also barred by repentance of the robber before he is apprehended and brought to trial; it being declared in the koran, concerning robbers, that "the fixed penalty shall be inflicted upon them, excepting such as repent before the magistrate lays his hands upon them." But the right of the individual, for private satisfaction, holds in this case, under the rules of kisas; and the robbers are responsible for the property taken by them. A robber delivering himself up, with the property, or the value of it, is not to be prosecuted for the stated punishment; nor is any penalty to be inflicted for an old offence, upon a person, who, long before his trial, has ceased to rob, and follows an honest livelihood."

* *N. A. R. vol.* 1, *page* 312.

† *v. para.* 4124.

‡ *v paras.* 155 *and* 156.

SECTION VI.

OF RECEIVING STOLEN PROPERTY.

Terms to be used in commitment.

4265. In commitments for knowingly receiving or keeping stolen or plundered property, the term "thuggeedaree" is not to be used; the charge is to be worded (in Persian) thus: مغروبه or سرقه مال داشتن و گرفتن دانسته و دیده. Const. No. 857.

Receivers where to be tried.

4266. Every person who receives any chattel, money, valuable security, or other property, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, or converted, whether charged as an accessary after the fact to the felony, or with a substantive

felony, or with a misdemeanor only, may be dealt with, indicted, tried, and punished in any place in which he has or has had any such property in his possession, or in any place in which the party guilty of the principal felony or misdemeanor may by law be tried, or in the place where he actually received such property. Act XVI. 1851.

The nature of the offence by which the property has been acquired is to be noted in the charge.

4267. An addition is to be made to the charge in all such cases, with the view to show distinctly whether the property illegally possessed was acquired by theft, burglary, dacoity, highway robbery, or thuggee. The reason of such addition is that persons accused of receiving property, stolen or plundered by thuggee or dacoity, may be committed under Act XVIII. 1839, and Act XXIV. 1843, by any magistrate within the territories of the East India Company,(*a*) and may be tried by any court, which would have been competent to try him, had his offence been committed within the zillah, where that court sits ;* whereas in the trial of charges for the guilty receipt or purchase of property acquired by theft, burglary, or highway robbery, it is essential to its legal validity, that regard be had to the jurisdiction within which the offence was perpetrated, and to the competency both of the committing and trying officer to take cognizance of the same.(*b*) The *Calcutta court* also observe that under the Acts above quoted, commitments for the crime of receiving property obtained by dacoity and thuggee may be tried by the session judge without the aid of a law officer or assessors† ; whereas in the other cases referred to, the trial cannot be held without recourse to a law officer or to the provisions of Reg. VI. 1832 : and they direct that session judges, who try a case without the aid of a law officer or assessors, shall denote on the face of the record the regulation or Act under which the trial is held.(*c*) C. O. *L. P.* No. 215, *W. P.* No. 217, of vol. 3.

* *v. paras.* 4011 *and* 4131.

† *v. paras.* 4014 *and* 4133.

If trial is held without law officer or assessors, the authority is to be noted.

Magistrate to be guided by the following rules.

4268. The magistrate is to be guided by the following rules in the investigation of charges preferred against individuals for the offence of receiving or buying stolen goods, cattle, jewels, money, or effects of whatever description, knowing the same to have been stolen. Reg. XII. 1818, sect. 4, cl. 1.

What cases *must* be committed.

4269. All prisoners who appear to the magistrate, from the investigation held by him, to be guilty of having purchased or received plundered or stolen property of any description knowing at the time of his purchasing or receiving the same that such property had been obtained in the perpetration of robbery by open violence, or of theft accompained with any of the aggravating circumstances described in cl. 2. sect. 2* [*i. e.* aggravated cases of burglary] or cl. 2, sect. 3† [*i. e.* cases of theft which the magistrate must or may commit for trial before the sessions court] of this regulation, are to be committed by the

* *v. para.* 4236.

† *v. paras.* 4172 *and* 4175.

(*a*) This construction deserves notice, because neither Act XVIII. 1837, nor Act XVIII. 1839, expressly declares, that persons charged with the offence of unlawfully and knowingly receiving or buying property stolen or plundered by thuggee, may be committed by any magistrate ; the latter Act makes the offence triable by any sessions court ; and it seems to be deduced therefrom that such commitments may be made by any magistrate.

(*b*) This argument regarding the venue of trial for receiving stolen property has been set aside by Act XVI 1851, given in the preceding paragraph ; but the order contained in the circulars appears to be still in force.

(*c*) This latter portion appears to have been expressly excluded from their circular order by the *Western court* ; and it would seem according to Const. No. 1074 (*para.* 4015) that the aid of the law officer or assessors cannot be dispensed with on the trials of prisoners charged with specific acts of receiving property which has been obtained by thuggee.

magistrate to take their trial before the sessions court; and such persons, if convicted before the sessions court of the offence of receiving or buying plundered or stolen goods, cattle, jewels, money, or effects of whatever description, knowing at the time that such property had been obtained by robbery, or by theft accompanied with any of the aggravating circumstances described in cl. 2 of sect. 2, or cl. 2 of sect. 3, of this regulation, are to be sentenced by the session judge, according to the circumstances of the case, to such period of imprisonment as appears proper, in no instance however exceeding 14 years, and to corporal punishment [now commutable to 2 years' additional imprisonment]. Reg. XII. 1818, sect. 4, cl. 2.

Such trials may not be referred.

4270. Where a prisoner was convicted by a session judge, concurring with his law officer, of receiving plundered property knowing it to have been obtained by robbery by open violence attended with murder, it was held that he was fully competent to dispose of the case himself, and could not refer the trial to the nizamut adawlut. N. A. R. vol. 5, page 179.

When the amount or value of the property stolen exceeds 300 rupees, the receivers of any portion of it must be committed.

4271. The provision for commitment in sect. 4, Reg. IV. 1820,—which enacts that in cases of theft, where the amount or value stolen exceeds the sum of 300 rupees, the amount is to be deemed a circumstance taking the case out of the magistrate's jurisdiction as to passing sentence on the accused, and is to make it necessary for him to commit the accused for trial to the sessions court,—is applicable to purchasers and receivers of stolen property, knowing at the time that such property was stolen, when the amount or value of the property stolen exceeds 300 rupees. Reg. VI. 1824, sect. 4.

What cases *may* be committed;

4272. The magistrate is also empowered to commit for trial to the sessions court any prisoner charged with the offence of buying or receiving stolen property of whatever description, knowing at the same time that such property had been stolen, although the property may not have been obtained in the perpetration of theft accompanied by any of the aggravating circumstances described in cl. 2 of sect. 2, or cl. 2 of sect. 3, of this regulation, provided that the prisoner has been before convicted of the offence of buying or receiving stolen property, or of robbery, burglary, theft, or other heinous crime, or that the prisoner appears to be an habitual and professional receiver of stolen property, or a person of notoriously bad character;—and such person is, upon being duly convicted before the sessions court, to be liable to such punishment, within the limitations prescribed in the preceding clause of this section, as the sessions court judges proper to direct on a consideration of all the circumstances of the case. Reg. XII. 1818, sect. 4, cl. 3.

and what sentence may be passed in such cases.

Previous conviction of theft of 10 rupees not to be considered conviction of a heinous crime.

4273. A previous conviction of petty theft, not exceeding ten rupees, when unattended with any aggravating circumstance, is not to be deemed a previous conviction of a heinous crime, such as precludes the magistrate's judicial cognizance of a charge of buying or receiving stolen property, and requires that the prisoner be committed for trial before the sessions court in the above provision. Reg. VI. 1824, sect. 5.

It is to be specifically mentioned in the futwas and abstract statement,

4274. Session judges are to be careful that their law officers state specifically in their futwas, declaring any persons to be convicted of receiving or purchasing stolen or plundered property, that such persons are convicted of having received or purchased such

property "knowing the same to have been stolen or procured by robbery." And the judge is to enter the same specification in the abstract statements. C. O. No. 115 of vol. 1.

that the offence was committed knowingly.

4275. With exception to the cases above-mentioned, the magistrate is to hear and determine, without reference to the sessions court, all other cases in which individuals are charged with the offence of buying or receiving stolen property of whatever description, knowing it at the time to have been stolen; or with the offence of having in their possession property obtained by theft or robbery, and knowing at a period of time subsequently to its first coming into their possession, that such property had been so obtained, notwithstanding which they have kept the stolen property in their possession without restoring it to the owner or giving information to the local police officer or magistrate. In such cases the magistrate, after having duly considered the evidence in support of the prosecution, the defence of the prisoners, and the evidence of the witnesses designated by the prisoners, is to proceed to pass sentence of conviction or acquittal: if the prisoners are convicted, the magistrate is empowered to sentence them to imprisonment with hard labor for a period not exceeding in any case 2 years, and to corporal punishment [now commutable to one year's additional imprisonment]. Reg. XII. 1818, sect. 4, cl. 4.

In all other cases of receiving or retaining possession of stolen property, the magistrate may pass what sentence.

4276. A magistrate is not competent to punish receivers of stolen property in any case, the aggravating circumstances of which render the commitment for trial of any of the prisoners necessary; but he must commit them for trial under the rule contained in cl. 2, sect. 4, Reg. XII. 1818. Const. No. 857.

Magistrate may not punish one, if the commitment of any other prisoner is necessary.

4277. The magistrate is to make a point of recording, in his roobakaree of commitment, the express circumstance or circumstances of aggravation, which have led him to commit a case of receipt of stolen property instead of disposing of it himself; and the session judge is to give the same information in his abstract statement of sentences passed without reference. C. O. No. 239 of vol. 1.

The magistrate in his roobakaree, and judge in his statement, are to note the circumstances leading to commitment.

4278. The knowingly receiving property acquired by burglary, comes under the general definition of property acquired by theft; and a discretion is left as to the degree of punishment according to the circumstances. Const. No. 303.

Property acquired by burglary is property acquired by theft.

4279. When the stolen property has been traced to the possession of the prisoner shortly after the theft, and he is unable to account satisfactorily for its possession, the presumption is that he was the actual thief and not merely the receiver. Reports *L. P.* 1855, part 1, page 28.

Presumption against person found to possess stolen property.

4280. A conviction of receipt of stolen property can be sustained only when there is proof of the personal possession of such property by the prisoner, as by having the property in his own hands, or directly under his personal charge, or within his house, with his consent and with a knowledge on his part of its having been obtained by theft or robbery. When proof of personal possession in some of these modes is wanting, there may be ground for a conviction of accessaryship after the fact in a robbery, but not for that of the receipt or possession of the plundered property. N. A. R. vol. 6, page 147.

Proof required to sustain charge.

The mere purchasing of stolen property is not an offence;

4281. There is no law, since the abrogation of sects. 12 to 25, Reg. I. 1811, which empowers magistrates or judges to punish sonars or other persons for purchasing suspicious property, without giving information to the police. And a session judge is not at liberty to make any act penal which is not declared to be so by the law of the land. Reports *W. P.* 1855, part 1, page 525. Where there is no criminal knowledge there is no offence. Reports *W. P.* 1855, part 1, page 828.

although the seller bears a bad character;

4282. The presumptions, which establish the guilty knowledge, must be matter of evidence in each case. It is not sufficient for a legal conviction that the prisoner bought the stolen property from a person of bad or doubtful character without inquiry as to the means by which he acquired it. Reports *L. P.* 1852, part 2, page 666.

and the price paid is below real value.

4283. But the mere fact of the prisoner having purchased the property at a price much below the real value of it, is insufficient to establish a valid presumption of guilty knowledge; and where the acts of the prisoner, in other respects, were opposed to a belief in his guilt, he was acquitted. Reports *L. P.* 1855, part 2, page 307.

But subsequent acts may show guilt in purchase.

4284. When the prisoner urged his respectability to show that in receiving the stolen property, he had no knowledge of the manner in which it was acquired, the court held that the guilty knowledge was established by his concealing the property, by his not entering it in his accounts, and further by his obtaining it without any enquiry from two persons of notoriously bad repute, one of whom had been previously convicted of theft. Reports *W. P.* 1855, part 1, page 111.

It does not necessarily follow that the possession of stolen property, the knowledge that it was so acquired having subsequently arisen, is criminal. The magistrate has a discretion not to punish at all. And if the judge pass a higher sentence than for 3 years' imprisonment, he is to state the grounds of such sentence in his abstract statement.

4285. Although the act of having possession of property obtained by theft or robbery, without having received it with the knowledge that it was so obtained, such knowledge having only subsequently arisen, is punishable under the Mahomedan law and the above provisions, yet it is not intended to declare that it is in every instance punishable; as it must obviously depend on the circumstances of each particular case, whether the act in question is, or is not, a criminal offence: under the discretion which cl. 4, sect. 4, Reg. XII. 1818 allows to the magistrate, he is considered to have a discretion not to punish at all, in cases in which no criminal act appears to be fairly imputable to the *bonâ fide* purchaser or possessor of property acquired by robbery or theft. Where it is determined, on the circumstances, to be an offence, and is left punishable by the futwa at discretion, (as the act is evidently of a very different complexion from that of being a criminal receiver of stolen goods, and thereby a principal encourager of goods being stolen) it is the opinion of the nizamut adawlut that it should be punished as a misdemeanor not of a very serious nature; and that a sentence equal to that, to which the magistrates are limited by the above provisions, is sufficient in most cases as a maximum of punishment: accordingly, in any instance where a higher penalty is adjudged, a particular statement of the grounds of such sentence is to be inserted in the abstract statement of prisoners punished without reference. The above remarks show how essential it is, in the trial of charges for receiving stolen property, or property acquired by robbery, not only that the evidence

to ground a conviction should go to the mode and circumstances of the receipt, and not to the mere fact of possession ; but also that the law officer, where it is intended by him to convict of the criminal receipt, should specify the same clearly and precisely in the terms of which he makes use. C. O. No. 215 of vol. 1.

Care enjoined in framing charges that the distinction above-noted should be observed. If there is doubt, the commitment should be for the higher offence.

4286. The court, having observed several instances, in which prisoners, who were apparently guilty of the offence of receiving stolen property knowing it to have been stolen, were committed to the sessions court for trial on a charge of knowingly keeping stolen property in their possession, which charge does not necessarily imply that the property so retained was received with the knowledge that it had been stolen,—deemed it expedient to call attention to the distinction pointed out, in the C. O. quoted above, between the receipt of stolen goods with a criminal knowledge which is a heinous offence, and the act of retaining possession of them when the knowledge of their having been stolen has arisen subsequently to their receipt, which is a simple misdemeanor. Care and precision are enjoined in framing indictments in cases of the kind in question. Whenever there is any doubt as to whether the higher or lower grade of offence has been committed, the charge should always be made for the higher grade on the principle laid down in para. 16 of C. O. No. 54 of vol. 2. C. O. No. 103 of vol. 4. *W. P.*

Husband and wife not to be indicted jointly as receivers.

4287. A husband and wife should not be indicted jointly as receivers of stolen property found in their house, unless it be in evidence that the wife acted independently and not under the influence of her husband. N. A. R. vol. 1, page 353 ; and vol. 6, page 92.

It is not necessary to prove that the person robbed had possession of the property up to the time of his death.

4288. Where a person was discovered dead in his house, and his jewels afterwards found in the possession of the prisoner, the latter was convicted of receiving property, knowing it to have been obtained by theft attended with murder, although nothing was adduced to show the period of time up to which the property had remained in the possession of the deceased. N. A. R. vol. 2, page 425.

Receivers of stolen property may be punished, though the thieves have not been convicted.

The fact of the robbery must be proved.

4289. It is hereby explained, that persons, charged with the offences specified in the preceding clauses of this section, may be brought to trial and sentenced to punishment, although the actual perpetrators of the theft or robbery have not been convicted ; provided, however, that the fact of the theft or robbery having been committed be established, and it be proved that the purchaser or receiver knew that the property in question had been obtained by theft or robbery. Reg. XII. 1818, sect. 4, cl. 5.

The record of a conviction of theft is not sufficient to prove the theft, if the alleged receiver desires to disprove it.

4290. On general principles, and under the provisions of the Mahomedan law of evidence, the record of the conviction of a person charged with theft is not conclusive proof against an alleged receiver of stolen goods to prove the theft, if the latter desire to controvert the propriety of the conviction, and produce evidence to negative the fact of a theft having been committed. Const. No. 217.

The amount of punishment awarded to the thief is no criterion for the sentence to be passed on the receiver.

4291. In answer to a court of circuit who objected to the practice of sentencing receivers of stolen property to a more severe punishment than that which is awarded to the thief, the nizamut adawlut replied that they were not prepared to narrow the discretion confided to the magistrates by the above provisions ; as the offence of receiving stolen property admits of so many shades of difference, that it would be impracticable to define,

with any degree of accuracy, under what circumstances a case of that description should be considered to be of an aggravated description or otherwise. Const. 466.

Property to be retained, if case committed.

4292. The magistrate ought not to restore the stolen property to the owner in a case committed to the sessions. Reports *L. P.* vol. 4, part 1, page 215.

Precedents.

4293. Where the prisoner was convicted of receiving property, knowing it to have been obtained by theft attended with murder, he was sentenced to imprisonment for 14 years; *N. A. R. vol.* 2, *page* 425. On conviction of the guilty receipt of embezzled property, the wife and brother of one of the persons convicted of the actual embezzlement were sentenced, for retaining possession of and concealing part of the property, to imprisonment for 2 years; and another also a relation of one of those persons was sentenced, for disposing of part of the property, to imprisonment for 4 years; *N. A. R. vol.* 5, *page* 1. Where stolen property was found in the houses of the prisoners two years after the theft, and there was no proof that, at the time of receiving it, they knew it to be stolen, they were acquitted; *N. A. R. vol.* 2, *page* 325.

Restitution of stolen property.

4294. There is no regulation which prohibits the delivery to the person robbed of any articles, which are proved to belong to him, or to have been purchased with money stolen from him. The officer disposing of the case must exercise his discretion in the disposal of the property. Const. No. 604.

Not only the stolen money or property may be restored; but also the property purchased with the stolen money

4295. Three sonars were convicted of embezzling 1752 rupees from some travellers, who rested one night in their house; on a subsequent search of their premises 241 rupees were recovered; certain mahájans gave up 300 rupees with which the son of one of the prisoners had purchased gold mohurs from them; and other sums were recovered from a person from whom the same man had redeemed certain ornaments, and from a mokhtar who had placed part of the stolen money with a banker. It was decided, in accordance with both the Mahomedan and the English law, that the person from whom the money was embezzled was entitled to the restitution of it, whether the rupees were the identical coins embezzled or others restored in lieu of them; and the court directed payment of the whole amount recovered to be made to the prosecutor.(*a*) N. A. R. vol. 5, page 1.

(*a*) In English law, by 7 and 8 Geo. 4, cap. 29, sec 57, in order to encourage the prosecution of offenders, it is enacted, that "if any person, guilty of any such felony or misdemeanor as aforesaid, in stealing, taking, obtaining, or converting, or in knowingly receiving any chattel, money, valuable security, or other property whatsoever, shall be indicted for any such offence by or on behalf of the owner of the property or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner, or his representative; and the court, before whom any such person shall be so convicted, shall have power to award, from time to time, writs of restitution for the said property, or to order the restitution thereof in a summary manner: provided always, that if it shall appear before any award or order made, that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bonâ fide* taken or received, by transfer or delivery, by some person or body corporate for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had, by any felony or misdemeanor, been stolen, taken, obtained, or converted as aforesaid; in such case the court shall not award or order the restitution of such security" The court cannot, under the above provision, order a Bank of England note, which has been paid and cancelled, to be delivered up to the prosecutor of an indictment against the party who stole it. Where a prisoner was convicted of stealing money, and it appeared that he had left in the care of another a horse, which it was clear, from the evidence, he must have purchased with the stolen money, the judge made an order for the delivery of the horse to the prosecutor. *Roscoe's Digest.*

Magistrate to furnish certificate of the execution of order for restoring stolen property.

4296. The session judge is to require the magistrate to certify the execution of all orders for the restoration of stolen property, either in the return endorsed on the warrant of the sessions court, or in a subsequent return to be made as soon as the execution of the order admits: and such certificates are to be carefully preserved among the records of the sessions court. C. O. No. 5 of vol. 1.

Voluntary restitution does not purge from crime.

4297. Voluntary restitution of the property by the prisoner does not relieve him from the consequence of the criminal act. Reports *W. P.* 1852, page 184.

Restitution of value of stolen property.

Fine not exceeding in amount the property stolen may be inflicted, and may be paid to parties injured, in cases of wrongful appropriation of property;

4298. All criminal courts, within the territories under the government of the East India Company, may add to the punishment competent to them to inflict upon persons convicted before them of robbery, theft, embezzlement, knowingly receiving stolen goods, cheating, or other wrongful appropriation of property, or of being accessary or privy to any such offence, the punishment of fine not exceeding the loss appearing to be caused to the several persons who have suffered by such wrong; and may pay and distribute the proceeds of the said fine, or any part thereof, to or for the benefit of the said several persons, according to the discretion of the court. Act XVI. 1850, sect. 1.

including plunder.

4299. These provisions apply to cases of plunder of property. Reports *L. P.* 1854, part 2, page 348.

Order must be passed by court which convicts.

4300. The order imposing such fine can be passed only by the court which convicts the prisoner. The officer making the commitment has no authority to pass an order of that nature. Reports *W. P.* 1851, page 665.

Enforcement of fine.

4301. Payment of every such fine may be enforced by distress and sale, under the order of the court, of the goods of the offender. Act XVI. 1850, sect 2.

Must be paid to the aggrieved person.

4302. Such fine must be paid to the aggrieved person, as it can be imposed only for the purpose of his reimbursement. Reports *L. P.* 1852, part 2, page 291.

Exact amount of property lost to be inserted in order.

4303. When the property of the prisoners is declared liable under this rule, the order must find the amount of property actually carried off. Reports *L. P.* 1856, part 1, page 583.

Not to exceed actual loss;

4304. The aggregate of such fines cannot exceed the value of the property carried off, less the value of any portion of it that may have been recovered. Reports *L. P.* 1853, part 1, page 190. Reports *W. P.* 1856, part 1, page 187.

and to be confined within reasonable limits.

4305. In the application of a heavily penal law, such as Act XVI. 1850, much care and discrimination are necessary, so as to reduce within fair and credible limits the amount of loss on account of which a fine is awarded as compensation. C. O. No. 8, September 12, 1854. *L. P.*

Judge to note evidence on which amount is found;

4306. The judge awarding such fine, should record on what evidence he has concluded that property to that amount was really stolen. Reports *L. P.* 1854, part 2, page 369.

and whether fine to be levied jointly or severally.

4307. It should always be distinctly mentioned in a sentence whether such fine is to be levied jointly or severally. Unless from some special circumstances in a case, such

fines should be imposed jointly and severally upon prisoners convicted of participation in a common offence. Reports *L. P.* 1853, part 2, page 114.

Execution of decree to be stayed pending appeal.

4308. The order, directing the levy of a fine under the above provisions, should not be carried into execution until the period for appeal has elapsed; and, in the event of an appeal being made, until the final sentence has been passed. C. O. No. 55 of vol 4. *L. P.*

The law cannot be enforced in another jurisdiction.

4309. Sect 2, Act XVI. 1850 contains no provision for distraining and selling the goods of an offender in another jurisdiction. The distress and sale must be made under the orders of the court directing them; and the orders cannot be transferred for execution elsewhere without express provision to that effect, as in other cases where the law lays down rules for giving effect to the orders of a magistrate of one district in a different one. Letter of N. A. to Magistrate of 24-Pergunnahs, No. 1415, October 6, 1852.

General remarks of the sudder court on the working of Act XVI. 1850.

4310. The mode of operation of Act XVI. 1850, has come under recent notice in connection with the administration of criminal justice, and it has been observed that the provisions of that enactment are, in many districts subject to the court's control, altogether unenforced; that, in others, if not inoperative, the law is only very partially and capriciously acted on; and that, generally, no obligation appears to be recognised of carrying out the object and intention of an enactment which, though in its terms permissive and not injunctive, is based on acknowledged principles, and, having been framed by the legislature for practical enforcement, ought not to be ignored by those charged with the administration of the criminal laws. From returns prepared in the court's office, calculated to show the extent to which the Act referred to has been enforced from the time it came into effect in these provinces in the sessions and magisterial courts, a great inequality of operation is manifest, the magistrates of some districts having made no use of its provisions, while in others effect has been generally, though to no large amount in money value, given to it by the magistrates' courts. The sessions courts have, in some instances, imposed large fines, but with almost no result, and some defect of machinery for carrying into execution the order of the court in this particular must be inferred from the nearly entire failure to realize any portion of the fine so imposed. With a view to urging on the local tribunals a consistent and regular, and at the same time guarded, enforcement of the provisions of this law, the court think it needful to notice what appear to be the principles on which the enactment is founded, and whether they are rightly apprehended by the mass of those who are called upon to administer it. The Act is for "restitution of the value of stolen property," and applies to all kinds of misappropriation of property, empowering all criminal courts to add to the punishment they are competent to inflict for the offences named, "the punishment of fine not exceeding the loss appearing to be caused to the several persons who have suffered by such wrong," payable and distributable, in whole or in part, to or for the benefit of such sufferers. The presumed basis of this law is the opinion of the writers of the Indian Code, "that every person who is injured by an offence ought to be legally entitled to a compensation for the injury:"—also "we are inclined to think that an arrangement might be adopted under which one trial would do the work of two: we conceive that in every case in which fine is part of the punishment of an offence, it ought to be com-

Principles on which the enactment is founded.

petent to the tribunal which has tried the offender, acting under proper checks, to award the whole, or a part, of the fine to the sufferer, provided that the latter signifies his willingness to receive what is so awarded in full satisfaction of his civil claim for reparation." As has been remarked by the government the principle of not allowing a depredator or his family to enjoy the profits of his wrong doing, and of making, as far as can be done, a prompt restitution or compensation to the sufferer, is obviously, in so far as it can be accurately applied, most essential to the satisfactory and efficient administration of criminal justice. The law, in its practical working, may be contemplated in a two-fold light, in its bearing on the *criminal*, and its possibly over-severe operation, in some instances, on *him* as well as on others, and in its effect on the interests of parties suffering wrong by his acts, viz. how far the object of the act is fulfilled in securing indemnification of their loss. In regard to the *first* matter, its effect on the criminal, when provision is made for a fine "not exceeding the amount of loss appearing to have been sustained," apprehensions might, not unnaturally, be excited by the fact of the little reliance which can ordinarily be placed on the reports made of the amount value of property stolen, and of the temptation presented by such a provision for sufferers to exaggerate their loss or even accuse men of substance falsely, involving the risk of great harm and injustice, in the hands of inconsiderate or inexperienced officers, in regard to the discreet application of the law. It might further be feared that the knowledge of such a law, and of the discretionary power conferred by it, would itself tend to increase the laxness of estimate or dishonest inclination noticed above, or to create it where it did not exist. It would perhaps be apprehended that even respectable persons might not regard themselves as bound to strict veracity or exactitude in their narrative of loss, where the party affected by it is one who has injured them, and is, indeed, the enemy of the community; and it would be suspected that, even if no *intentional desire* to exaggerate a loss should exist, such a result would be no improbable one in the case of rich individuals who may not actually know *what* their personal property or amount of cash was, or, consequently, *what* may have been abstracted. Caution and discretion in exercising the powers conferred by the Act are, doubtless, suggested by these considerations, in order to the prevention of abuses;* and, in applying a highly penal law like this, much care and discrimination are needed to reduce within fairly credible limits the amount of estimated loss in compensation of which a fine is imposed; and, consequently, where the alleged value of stolen property may be the *sole reason* for the commitment of a prisoner, such proof should be placed on record by the criminal courts as may show a reasonable probability that the loss sustained by the prosecutor really amounts to the sum specified, and charged in the indictment. It may, at the same time, be doubted whether, in practice, evil results of the above kind, in the abuse by prosecutors of the provisions of the law, have been, to any extent, common or prevalent; nor can the mere *anticipation* of such consequences be any sufficient reason for judicial officers neglecting to carry out, on fit occasions, the intention of the enactment. It would, on the other hand, be open to remark that the interests of the sufferer from misappropriation must be very imperfectly secured by a provision which may be altogether inoperative from the poverty, or be evaded and defeated by the cunning, of the criminal and his friends, and the reimbursement contemplated by which must, in all or most thefts of large amount, be partial and inadequate by reason of the restricted application of

Caution and discretion necessary in regard to value of property stolen.

* *See paras.* 4183 *and* 4184.

Only moveable or personal property can be sold.

Property cannot be attached before sentence.

Fine may be adjudged after decision of case.

Sentence of fine should be passed on all reasonable occasions without reference to the probability of its realization.

But it should be realized whenever practicable.

the distress and sale to the "goods," that is to the moveable or personal property, which only, it has been held, is liable to the process of distraint, whereby *houses* (among other property) are exempted. Further, if any tangible property liable to distraint under this law should be forthcoming, the difficulty arises of its being contrived to be secreted, or made away with, in the interval between the apprehension of the criminal, and the final process of distraint following upon fine after conviction, and of a consequent evasion of the Act. The attachment of any personal property of parties accused of theft, *upon apprehension*, with a view to securing the eventual indemnification of the party losing by such Act, is not a procedure warranted by this enactment. It has also been doubted whether the presiding authority in a criminal court, proceeding under the Act, is competent to pass an order of fine, within its meaning, after decision of the case, or whether it is absolutely necessary that such order should be passed at the time of decision. The latter obligation may be thought to be implied, but is not expressly *declared* by the terms of the Act; though instances are frequent of prosecutors, after a criminal sentence has been passed, coming forward with a claim for reimbursement and with indication of concealed or alienated property which they have discovered, belonging to the sentenced culprit. With regard to the practice of the local authorities, in their appreciation of the purpose of the law, the court observes that much uncertainty and diversity appear to exist. Some officers, adverting to the permissive terms of its provision, have not felt themselves under obligation to apply them in practice. Others, instead of imposing the fine allowed, and leaving the result to work itself out, have been wont *first* to institute an enquiry as to the existence of property, and the means of realizing any fine which might be imposable, arguing that where the absence of material of payment is certain or presumable, it is useless to go through the form of an award. Others have spoken of the working of the Act, and their sense of the obligation they are under to enforce it, chiefly in respect to its supposed effect, or otherwise, on the repression of crime. In these several instances, misapprehension to a greater or less extent, appears to the court to exist. Officers are bound to avail themselves of all reasonable occasions of enforcing the laws which may be enacted for their guidance, irrespectively of a future contingency for which they are not responsible. While, moreover, one of the results of such a penal law, when equally and duly executed, might be to repress crimes against property, yet its primary intent and object appear to be the more perfect vindication of justice by not only punishing the wrong-doer, but also awarding compensation for the wrong. The court consider that the foregoing remarks are sufficient, at present, to direct the attention of the zillah authorities, generally, to the importance of carrying out the permissive provisions of the law in a way calculated to avoid, on the one hand, the risk of exaggerated estimates of loss or false and perjured implications of innocent people, and to secure, on the other, the prompt reimbursement, as far as may be practicable, of parties who have suffered loss of property by the lawless acts of offenders. To this end, it is not enough that a fine be merely *imposed*; it must be *realized*. The Act must have a fair trial given to it, and the local officers will then possess means, which are wanting at present of testing its practical utility, and suggesting improvements or indicating defects. C. O. No. 103, January 2; 1855, *W. P.*; and No. 15, March 21, 1855, *L. P.*

4311. The following register is to be kept up by the magistrate of all fines imposed under Act XVI. 1850, and the entry of each fine is to be made as soon as the order is passed. An abstract of this register showing the items still unrealized, with explanations of the causes of delay in recovering the amount, is to be submitted to the court with the magistrate's annual criminal report.

Register of all such fines to be kept up pending the realization of them.

Year.	Number of case.	Name, caste, age, and residence of person fined.	Amount of fine.	Date of fine.	Name, age, caste, and residence of person to receive the fine.	Steps taken to recover the amount.	Remarks.

In the column of remarks are to be entered the date of recovery of any part of the fine, the amount recovered, and the source from which the amount realized was derived. The column will remain open until the whole amount of the fine has been recovered, or until it appears to be hopelessly irrecoverable, in which case an entry is to be made to show the date on which the case was struck off, and the reasons why its further continuance on the file may be considered useless. C. O. No. 12, April 29, 1857. *L. P.*

CHAPTER II.

OF MALICIOUS OR WANTON DESTRUCTION OF CATTLE.

4312. Whoever is charged with maliciously or wantonly causing the death of any cattle, the property of another, may be proceeded against in the mode prescribed in section 25, Regulation XX. 1817* for proceeding against persons charged with a heinous offence; and shall, on conviction before a magistrate (or other officer exercising the powers of a magistrate), be liable to imprisonment with hard labor for any period not exceeding three years; or, at the discretion of the said magistrate, may be committed for trial before the session judge, and, on conviction, shall be liable to imprisonment with hard labor for any period not exceeding nine years.(a) Act IV. 1856, sect. 1.

May be treated by police as a heinous offence.

* *See paras.* 2319, *et seq.*

Power of magistrate.

Power of judge.

Value of cattle to be restored.

4313. The provisions of Act XVI. 1850† are applicable to persons convicted of offences under this Act. Act IV. 1856, sect. 2.

† *See paras.* 4298, *et seq.*

(a) Under the Mahomedan law, cruelty to animals causing, though not intended to cause, death, although unaccompanied by any malicious intent towards their owner, is an offence punishable under the general head of tazeer. Reports *L. P.* 1852, part 1, page 831.

The law quoted in the text is not applicable to *attempts* to commit the offence described. But for such an attempt a sentence of 7 years with labor was confirmed by the Sudder Court. Reports *L. P.* 1856, part 1, page 313.

CHAPTER III.

OF ARSON.

Definition of arson. Punishable by the sessions court only.

4314. The wilfully and maliciously setting fire to any village, town, house, or other building, constitutes the crime of arson, which is punishable only by the sessions court. This definition includes the malicious and wilful burning of a boat laden with men or merchandise, or of a tent, or other place used for the time being as a dwelling. Acts of incendiarism other than the above do not fall within the definition of arson found in the regulations; and the criminality of such acts varies very much according to the presumed motives of the incendiary, the effect of his act either actual or probable, and generally the circumstances which distinguish it. But there is nothing in the regulations which precludes a magistrate from disposing finally of such cases, provided he considers the punishment, which he is competent to award under sect. 19, Reg. IX. 1807, adequate to the offence proved. The magistrates are to act according to this view of the law, bearing in mind that, if by any act of incendiarism, not coming within the above definition of arson, lives are endangered or valuable property destroyed, or if the act is accompanied by other aggravation, they are at liberty to exercise their discretion in committing the accused to the sessions court. In such cases, however, the magistrates are required to state specially in the calendar or roobakaree of commitment their reasons for making over the prisoners to the sessions court, in preference to passing sentence themselves; and any commitment of this kind, for which such special reason is not assigned, is liable to be cancelled. Those cases, in which the sentence sanctioned by cl. 7, sect. 2, Reg. LIII. 1803 is considered insufficient, are to be referred by the session judges for the final orders of the nizamut adawlut under sect. 6, Act XXXI. 1841. C. O. No. 13 of vol 4.

All other cases are within the competence of the magistrate.

But he may commit those accompanied with aggravation:

explaining his reasons in the calendar or roobakaree.

If the discretionary punishment within the competence of the judge is insufficient, he is to refer the trial.

Cases of arson must be committed.

4315. Cases of arson as defined in C. O. No. 13 of vol. 4 must be committed to the sessions. Wilful arson of course implies a malicious intent. Reports *L. P.* 1852, part 1, page 893.

Separate sentence required for each offence.

4316. Arson and incendiarism are not offences, the penalties of which are within the scope of sect. 2, Reg. VI. 1824. That section refers to convictions and sentences of burglary and theft only. Reports *L. P.* 1852, part 1, page 893.

Terms to be used in the vernacular.

4317. The word "sokhtugee" it is thought is not a proper equivalent for "incendiarism"; and the use of the terms آتش زني شديد and آتش زني خفيف to represent arson and incendiarism respectively, is recommended. C. O. No. 16 of vol. 4. *W. P.* The following terms are prescribed for use in the *Lower Provinces* in all statements and proceedings:—arson عداوة مكانات و غيرة جلا دينا; দ্বেষপূর্ব্বক গৃহাদি দাহ করণ; —incendiarism, عداوة اجناس وغيرة جلا دينا দ্বেষপূর্ব্বক দুব্যাদি দাহ করণ. C. O. No 20 of vol. 4. *L. P.*

Precedents,—arson.

4318. Where the arson was committed by a body of armed men, who attacked and destroyed a rival hath, the prisoners were sentenced to imprisonment for 5 years with labor and irons; Reports *L. P.* 1851, page 364 and 963. And the same punishment was awarded when a house was wilfully set on fire at night, although the motive was not apparent;

Reports *L. P.* 1851, page 1729:—and where the act was done openly and from motives of revenge; Reports *L. P.* 1852, part 2, page 288; and 1853, part 2, page 390. Where the value of the property destroyed was large, sentence was passed for 7 years' imprisonment. Reports *L. P.* 1853, part 2, page 926. Where the prisoner set fire to his own house, giving notice thereof to his neighbours, apparently without motive, and but little harm was done, he was sentenced to imprisonment for one year without labor or irons. N. A. R. vol. 3, page 230. And where the prisoners, who cultivated a piece of land of which the proprietor had lately granted a lease to an indigo-planter, evinced a disposition not to relinquish the land, and threatened to burn the factory, if they were deprived of possession; and one of them at night set fire to a heap of old and worthless indigo weed distant only six paces from the factory, while the other stood by aiding and abetting, and the weed was burnt; the former was sentenced to imprisonment without labor and irons for one year, and the latter (in consideration of his youth, 14 years) for four months. N. A. R. vol. 3, page 362.

Precedents — incendiarism

4319. Where the prisoners maliciously and by open violence set fire to some mustard plant stored in sheaf, the ringleader was sentenced to 5 years' imprisonment with labor and irons. Reports *L. P.* 1853, part 2, page 526. And in a similar case, with reference to the large amount of property destroyed, the imprisonment awarded was for 14 years. Reports *L. P.* 1854, part 1, page 696; 1855, part 2, page 565; and 1856, part 1, page 312. So, in a similar case, for 7 and 5 years. Reports *W. P.* 1853, part 2, page 1556.

NOTE.

By the English common law, the offence of arson is a felony, and is defined by Lord Coke to be the malicious and voluntary burning the house of another, by night or by day. It must be the house of another; the burning of a man's own house is no felony at common law, but if a man set fire to his own house maliciously, intending thereby to burn the adjoining house belonging to another, if the latter house is burned, it is felony; if not, it is a great misdemeanor. To constitute arson at common law, it must be proved that there was an *actual* burning of the house, or of some part of it, though it is not necessary that any part should be wholly consumed, or that the fire should have any continuance, but be put out, or go out of itself. The *setting fire* to the house of another maliciously to burn it, is not a felony, if either by accident, or timely prevention, the fire does not take place. Where a house has been robbed and burnt, proof that part of the stolen property was found in the possession of the prisoner is evidence to show that he committed the arson. The act of burning must be proved to have been both wilful and malicious, otherwise it is only a trespass and not felony. but where the primary intention of the offender is to burn only his own house (which is no felony), yet if in fact other houses are thereby burned, being adjoining and in such a situation as that the fire must in all probability reach them, the intent being unlawful, and the consequence immediately and necessarily flowing from the original act done, it is felony; for the law in such case implies malice: and generally, if the act be proved to have been done wilfully, it may be inferred to have been done maliciously, unless the contrary be proved; the absence of malice or spite to the owner is no answer to the charge. The offence may be committed, not only with regard to a dwelling house, but also with regard to all out-houses which are parcel of it, though not contiguous, or under the same roof.—Besides the common law, the various offences of burning houses and other property are now for the most part provided against by various statutes, under one of which a person unlawfully and maliciously setting fire to any dwelling house, any person being therein, may be adjudged to suffer death. **Roscoe's Digest; and Archbold's Criminal Pleading.*

CHAPTER IV.

OF FRAUDULENT OFFENCES AGAINST PROPERTY.

NOTE.—*The special provisions which regard the trial and punishment of native ministerial officers of government charged with extortion, corruption, embezzlement, and offences of the like nature, have already been detailed in section 4, chapter 5, of the second book; see page 468: in the following sections are given the rules which respect other classes of persons guilty of such offences, and the reported cases.*

SECTION I.

OF EMBEZZLEMENT AND BREACH OF TRUST.

Civil judge how to proceed if a ministerial officer is guilty of embezzlement.
* *v. paras.* 2548 *et seq.*
† *v. para.* 4469.

4320. Although a summary enquiry into cases of embezzlement by ministerial native officers of the civil court may be conducted by the judge under the provisions of sect. 7, Reg. XVIII. 1817,* yet that officer is by no enactment empowered to commit for trial before the sessions court for the offence; the rule of cl. 2, sect. 14, Reg. XVII. 1817† is applicable only to cases of perjuries committed by parties in a civil suit actually pending before a judicial authority. The duty of commitment is left to the magistrate, to whom the judge should transmit his proceedings, if grounds appear to exist for subjecting the accused to a criminal trial; and the magistrate in committing or releasing the person charged with the offence is to act on his own judgment on a fair consideration of the evidence adduced. Const. Nos. 518 and 691.

A peon making away with money entrusted to, or collected by him.

4321. The case of a peon, on the establishment of a government functionary, making away with money entrusted to, or collected by him, does not come within the meaning of Reg. II. 1813. Const. No. 1200.

Public servants embezzling or fraudulently disposing of property entrusted to them to be deemed to have feloniously stolen it.

4322. Every person employed in the public service of her majesty, and entrusted, by reason of such employment, with the receipt, custody or control of any chattel, money, or valuable security, who shall embezzle the same or any part thereof, or in any manner fraudulently apply, use, or dispose of the same, or any part thereof, for any purpose other than a purpose to which the same is applicable under the trust reposed in him, shall be deemed to have feloniously stolen the same. Act XIII. 1850, sect. 1.

Enumeration of some public servants to whom this Act is applicable.

4323. All official trustees, assignees, and receivers of money, by virtue of their several offices or appointments; all justices of the peace, coroners, and other persons receiving by virtue of their offices or appointments any fines, forfeitures, penalties, or other moneys, on behalf of her majesty; all sheriffs, under-sheriffs, bailiffs, officers, and other persons employed to levy money in execution of the judgment or order of any court, or in receiving any taxes or other moneys directed to be levied by any Regulation of the governor or governor in council of any presidency or place, or by any Act of the governor general of India in council; and also all subordinate officers and servants employed in the office or service of any of the persons hereinbefore enumerated, and entrusted with

money in the course of such employment, are declared to be persons employed in the public service within the meaning of this Act: but this special enumeration of some of the persons included in the general description of persons in the public service of her majesty shall not be taken to abridge the meaning of that general description. Act XIII. 1850, sect. 2.

Clerks and servants stealing.

4324. Every clerk or servant, who shall steal any chattel, money, or valuable security, belonging to or in the possession or power of his master, shall be punishable in the same manner as persons convicted of felonious stealing under this Act. Act XIII. 1850, sect. 4.

Clerks and others embezzling property received on master's account.

4325. Every clerk or servant, or any person employed for the purpose or in the capacity of a clerk or servant, who shall, by virtue of such employment, receive or take into his possession any chattel, money, or valuable security, for or in the name or on the account of his master, and who shall fraudulently embezzle the same or any part thereof, shall be deemed to have feloniously stolen the same from his master, although such chattel, money, or security, was not received into the possession of his master otherwise than by the actual possession of his clerk, servant, or other person so employed. Act XIII. 1850, sect. 5.

Members of trading company, and agents fraudulently disposing of property entrusted to them.

4326. Every member and officer of a trading corporation or company, and also every banker, merchant, factor, broker, attorney, or other agent, whether he be commonly so employed, or be employed as an agent in that instance only, and whether he act as such agent gratuitously or otherwise, to whom any chattel, money, or valuable security is entrusted for safe custody, or for any special purpose, and whether with or without any authority to sell, negotiate, pledge, or employ the same, but with an authority limited to some defined purpose as to the application of such money, chattel, or valuable security, or of any part thereof, or of the proceeds or of any part of the proceeds thereof, who shall fraudulently apply, use, or dispose of the same or any part of the proceeds thereof, for any purpose other than a purpose for which the same was entrusted to him, shall be deemed to have feloniously stolen the same. Act XIII. 1850, sect. 6.

Sub agents, clerks, or servants.

4327. Every sub-agent, clerk, or servant of any such trading corporation or company, or of any banker, merchant, factor, broker, or other agent as aforesaid, who, knowing the purpose for which such chattel, money, or valuable security was entrusted to the corporation, company, person or persons, by whom he is employed, shall fraudulently apply, use, or dispose of the same, for any purpose other than a purpose for which the same was entrusted to his employer or employers, shall be deemed to have feloniously stolen the same, though he were not himself immediately employed or entrusted with the disposition thereof by the person entitled thereto. Act XIII. 1850, sect. 7.

Embezzlement or fraudulent disposal of property by trustee.

4328. Every person, possessed, or having the receipt, custody, or control of any chattel, money, or valuable security, in trust for any other person or persons, who shall embezzle the same or any part thereof, or in any manner fraudulently apply, use, or dispose of the same, for his own use or benefit, in breach of the trust reposed in him, shall be deemed to have feloniously stolen the same. Act XIII. 1850, sect. 8.

Punishment for such offences.

4329. Every person convicted of having feloniously stolen any chattel, money, or valuable security under this Act, shall be liable to be transported out of the territories under the government of India for life, or to be imprisoned with or without labour for any term not exceeding seven years. Act XIII. 1850, sect. 9.

What are valuable securities.

4330. Every instrument entitling or shewing the title of any person to any share or interest in any public stock or fund of any country or state, or in any stock of any corporation or company, or for the transfer of any such share or interest, or for the receipt of any dividend or interest on any such share, or entitling or shewing the title to any deposit in any bank; and every warrant, order, or instrument for the payment of any money on any event, certain or contingent, or for the delivery or receipt of any goods, or merchandize, on any such event, is a valuable security within the meaning of this Act. Act XIII. 1850, sect. 10.

The same charge may contain any number of acts within six months. Proof of deficiency is evidence of offence.

4331. Any offender under this Act may be proceeded against on the same charge for any number of distinct acts of embezzlement or fraudulent application, use, or disposition as aforesaid, committed by him within six calendar months from the first to the last of such acts; and proof of a gross deficiency in the accounts of any such trustee or public servant, shall be evidence of the offence charged until such deficiency is otherwise explained. Act XIII. 1850, sect. 11.

This does not limit time for institution of suit.

4332. Sect. 11, Act XIII. 1850 contains no limitation as to the period within which a prosecution under that law can be instituted. Reports *L. P.* 1852, part 1, page 169. But the transactions to which the charge relates must not extend over a period exceeding six calendar months. Reports *L. P.* 1853, part 1, page 390.

Form of indictment if offence relates to money, or security for money.

4333. If the offence relates to money or to any bank note, bank post bill, banker's cheque, bill of exchange, promissory note, government paper, or other like security for the payment of money, it shall be enough in the indictment or charge to allege the embezzlement or fraudulent application, use, or disposition of money, without specifying any particular coin or valuable security; and such allegation shall, so far as regards the kind of property, be sustained, if the offender is proved to have embezzled or fraudulently applied, used, or disposed of any amount of money or any valuable security, though the particular kind of coin or valuable security, of which such amount was composed, shall not be proved. Act XIII. 1850, sect. 12.

Description of owner and offender, and of property, and purpose of trust.

4334. It shall not be necessary, in any proceeding against any offender under this Act, to declare the person to whom the property embezzled or fraudulently applied or disposed of belongs, otherwise than hereinafter provided, or to give any other description of it than by stating its general character according to the provisions of this Act; and if the offence be that of embezzlement or fraudulent application, use, or disposition, by a person in the public service of the crown, or of government, of property entrusted to him by reason of such employment, or part thereof, it shall be enough to state that the defendant was in such service, and that he received the property by reason of such employment, and embezzled the same, or part thereof, or fraudulently applied, used, or disposed of the same, as the case may be; and, if the case be one of fraudulent application, use, or disposition by any person not being such public servant but entrusted as aforesaid, it shall be enough to state that such person

was entrusted with the property (describing its general character as aforesaid); and it shall be enough to state shortly the purpose of the trust, and that he fraudulently applied, used, or disposed of the same contrary to his duty in that behalf. Act XIII. 1850, sect. 13.

Framing of charges; nature and purpose of trust to be set forth.

4335. Attention must be paid to the careful and proper framing of charges of embezzlement under sect. 13, Act XIII. 1850. The nature and purpose of the trust must be set forth in the charge; for it is important that the accused should be distinctly informed what trust he is charged with having abused. If the purpose of the trust is not mentioned in the charge, no conviction can follow. [Reports *L. P.* 1853, part 2, page 1003.] The distinction between embezzlement and theft being nice, in cases of embezzlement under the Act a count for theft arising out of the same act should be added, as a conviction for theft cannot be had on a charge of embezzlement only. Under sect. 14 of the Act, power is given to make any amendments in the charge that may be necessary, and under C. O. No. 70 of vol. 4,* session judges are competent to alter the charge from embezzlement to theft. But the insertion of both counts prevents delay, and enables the sudder court on appeal to deal with either charge. C. O. No. 73 of vol. 4. Reports *L. P.* 1851, page 1618.

There should be one count for embezzlement and one count for theft.

* *See para.* 1058.

Fatal error in description of owner.

4336. Where the charge was for embezzlement of money belonging to government, and it was proved that the money in fact belonged to an individual, the trial was quashed. Reports *L. P.* 1854, part 2, page 62.

Power of court to amend description.

4337. The court before which any offender is tried under this Act shall have power upon the trial to make any amendments that may be necessary, by reason of any variance between the statements of the charge and the evidence, either in the description of the property, or of any person, or of any office, appointment, or employment, or of the purpose of the trust or otherwise, when in the opinion of the court the person charged cannot have been misled as to his defence by such imperfect or erroneous statement. Act XIII. 1850, sect. 14.

Proof of trust is requisite to bring the case under the Act.

4338. To constitute the crime of embezzlement it is necessary to prove that the prisoner was the servant of the person whose money he appropriated, that he received it by virtue of that employment, and then feloniously embezzled it. Where a mohurir obtained from the treasurer 400 rupees on the false plea that he was authorized by the principal sudder ameen to draw his salary, the court held that it amounted to obtaining money under false pretences, not to embezzlement. In this case also it was observed by the court that the indictment was defective, as it did not specify the nature of the prisoner's service, and that he received the money by reason of such employment, as required by sect. 13, Act XIII. 1850; and that the omission to record the deposition of the principal sudder ameen, which was essential to the conviction of the prisoner, vitiated the proceedings altogether. The roobakaree of the principal sudder ameen stating that he did not give the prisoner permission to draw his salary, could not be admitted as legal evidence. The prisoner had a right to have the principal sudder ameen examined in his presence, and to cross-examine him upon it. Reports *L. P.* 1852, part 1, page 112.

The verbal evidence of the officer entrusting is requisite.

Any court of competent jurisdiction may try.

4339. Every offender under this Act may be tried and punished by any court of competent jurisdiction either in the place where he is in custody, or where he committed the offence. Act XIII. 1850, sect. 15.

Commitment necessary if theft of a similar amount must be committed.

4340. A magistrate is competent to dispose of certain cases of embezzlement under Act XIII. 1850, by which breaches of trust and embezzlement are made punishable as felonious stealing. It is only in cases, which, viewed as thefts, a magistrate may not consider within his cognizance, that commitment is necessary. Reports *L. P.* 1851, page 493.

Liability of offender to make good any loss.

4341. The punishment of any offender under this Act shall not be deemed to take away or lessen his liability or the liability of his sureties to make good any loss sustained by her majesty or any other person or persons by his misbehaviour or breach of trust. Act XIII. 1850, sect. 16.

Recovery of money does not bar punishment.

4342. Punishment for embezzlement is not barred by the realization from the surety of the prisoner of the whole amount embezzled. Reports *L. P.* 1855, part 1, page 606.

Punishment for rendering false accounts, though no embezzlement proved.

4343. Every person charged with a felonious breach of trust under this Act, who shall be proved to have knowingly made up or furnished false statements or accounts of the sums of money received or paid by him or entrusted to his care, or of the goods or balance of money in his custody or control, shall be liable to fine in the discretion of the court, although no actual embezzlement or fraudulent application, use, or disposition of trust moneys, chattels, or valuable securities, is proved against him, and in addition to such fine may be imprisoned, with or without labour, as the court shall adjudge, for any term not exceeding one year; but no person convicted of felonious breach of trust as aforesaid shall be punished also for making up false accounts in connection with the same breach of trust. Act XIII. 1850, sect. 17.

Mere loss or expenditure of the money does not always amount to embezzlement.

4344. In the case of a servant to whom money was advanced for the purposes of trade, where it was proved only that there was a balance against him according to his own accounts, and that he subsequently absconded, the court held that there was no evidence of a fraudulent breach of trust punishable under Act XIII. 1850; and that the fair presumption was that he had speculated injudiciously and suffered loss. Reports *L. P.* 1851, page 1481; and 1858, page 536. In a similar case the court held that a factor or agent could not be convicted of embezzlement, under the Act, upon proof of disbursements disallowed by his employer, unless there be evidence that the monies entrusted to him were not disbursed by him for his employer's purposes, but remained unaccounted for in his possession, so as to afford proof, according to the Act, of fraudulent misappropriation. Reports *L. P.* 1853, part 1, page 390.

Criminal trial not barred by a dispute regarding accounts;

4345. A criminal trial for embezzlement is not barred by the fact that the case is one of disputed accounts and that it is within the cognizance of the collector under sect. 20, Reg. VII. 1799. If the accusation against the defendant involves a criminal charge of embezzlement, the magistrate is bound to take judicial cognizance of it, although the defendant be also liable to a civil suit for the restoration of the sum alleged to have been embezzled by him. Letter of Nizamut Adawlut to Judge of 24-Pergunnahs No. 378, April 14, 1853.

or by summary suit.

So, the institution of a summary suit under Reg. VII. 1799, for the recovery of the sum alleged to have been embezzled, does not prevent a criminal prosecution for embezzlement being sustained against the prisoner on the same transaction. Reports *L. P.* 1854, part 1, page 194.

4346. The mere absconding from service without rendering proper accounts is not punishable offence. Reports *L. P.* 1851, page 1481.

Absconding from service without accounts is not punishable.

4347. A person accused of embezzlement of tolls at a ghat on the Nuddea Rivers, was acquitted for want of sufficient proof that the tolls were ever paid to the prisoner, or were realized by any government officer with the prisoner's knowledge. N. A. R. vol. 6, page 232.

Proof of receipt of money.

Precedents under the Act.

4348. Where the prisoner, an abkaree darogah, was charged with embezzling a sum of money collected on account of government revenue from an abkaree pottadar and he pleaded that he received the sum in liquidation of money advanced to the account of the pottadar in preceding months; and it appeared that the prisoner had money transactions with the pottadar; and that such objectionable practice had the countenance if not the sanction of the head of the office, inasmuch as the system (proved to have prevailed) of realizing the government dues by deducting the amount of balance owing by the abkars from the salary of the prisoner, allowed the prisoner to do what he pleased with the rents; the court held that the prisoner could not be held criminally responsible for applying the sum to his private use. Reports *L. P.* 1852, part 1, page 17.

Acquittal on account of a reprehensible system of keeping accounts.

4349. The prisoners, boatmen, were entrusted with a boat-load of grain to be conveyed to a certain village. On arrival there they were directed to proceed to another place, but instead of so doing they carried it away and disposed of it, appropriating the proceeds. Under these circumstances they were convicted of breach of trust. The broker, by whose aid the grain was sold, was acquitted on the ground that he could not be convicted of the breach of a trust to which he was not a party. Reports *L. P.* 1855, part 1, page 616.

Fraudulent disposal of cargo by boatmen.

4350. A prisoner trading in partnership on borrowed capital with 4 others decamped with the common fund. On the prosecution of one of the partners for theft, the session judge convicted him under Act XIII. 1850. The sudder court acquitted him on the ground that a conviction of breach of trust could not be had on a charge of theft; but left it to the magistrate to re-commit on a charge of breach of trust. It was also held that the prisoner could not be charged with the theft of the money as belonging to the lender; and that he could not be prosecuted by his partner for theft of money in their joint possession. Reports *L. P.* 1855, part 1, page 639. But where a mahajun advanced a sum of money to four persons to trade with for themselves and him, and they were to repay him by a share of the profits, and one of them absconded with the money, which was not in his special custody; it was held that the mahajun was rightly made prosecutor; and that the prisoner was rightly convicted of theft. Reports *L. P.* 1856, part 1, page 928.

A partner absconding with common funds cannot be punished for theft.

Precedents before the Act.

4351. A moonsiff and kazee, convicted of receiving petitions of plaint on unstampt paper contrary to the regulations, and appropriating to his own use the value of the stampt paper on which those petitions should have been written, was sentenced to imprisonment for one year without labor, and a fine of 50 rupees commutable to 6 months' further imprisonment, and to be dismissed from his appointment: a person, employed as a mohurir in his office, convicted of being concerned in the same corrupt transactions, was sentenced to imprisonment for one year without labor. N. A. R. vol. 1, page 371.

Case of a moonsiff receiving petitions on plain paper, and appropriating the value of the stamps on which they should have been written.

4352. The treasurer of a collector's office was convicted of paying money out of the treasury under illegal and irregular orders of the collector, which he well knew were

Case of the treasurer of a collectorate paying money

on the illegal and fraudulent orders of the collector.

illegal, irregular, and fraudulent; the objection that he had not been confirmed in his office was not allowed, as he was *de facto* treasurer at the time of making the disbursements; and he was sentenced, although the collector himself had not been brought to trial, having effected his escape, to imprisonment without labor for 6 months, regard being had to the period during which he had already been in confinement. N. A. R. vol. 2, page 229. In a similar case the treasurer and acting treasurer were sentenced to imprisonment for one year, and the writer, for privity, for 6 months. N. A. R. vol. 6, page 156.

Cases of subordinate revenue officers appropriating collections made by themselves.

4353. A putwaree of a government village, whose salary had been stopped by order of the revenue authorities, appropriated to his own use part of the collections in his hands to an extent not exceeding the amount of salary withheld; this was held to be embezzlement, and he was sentenced to imprisonment for one year. N. A. R. vol. 5, page 114. And a tuhseeldar, convicted of applying to his private use a certain sum of money, after he had reported it to the treasurer as received on account of government, was declared guilty of a misdemeanor under Reg. II. 1813, though the zumeendar, by whom it was paid, acquiesced in the appropriation: the prisoner having been in confinement for 19 months, the imprisonment already undergone was deemed sufficient punishment for the offence, and he was discharged. N. A. R. vol. 3, page 45. But where a tuhseeldar realized the amount of a debt due to him by a zumeendar from the proceeds of the estate of his debtor, such proceeds not having been specially paid as revenue, and the estate not being under legal attachment in his hands, he was not considered guilty of embezzlement. N. A. R. vol. 3, page 37.

Case of a tuhseeldar deducting from the collections unauthorized loans made by him to individuals in balance.

4354. A tuhseeldar, convicted of having made unauthorized loans or advances to individuals in balance for one year, and supplying the deficiency in the public accounts by sums paid as revenue in the succeeding year, was held guilty of embezzlement, and sentenced to imprisonment for one year without labor. N. A. R. vol. 2, page 463.

Case of surburakar under Reg. V. 1812.

4355. As a surburakar under Reg. V. 1812 holds his appointment under sunnud from the collector, and the estate whilst under attachment is under the management of government through their officers, the collector and surburakar, a criminal prosecution on the part of government for embezzlement of rents collected will lie; but the provisions of Reg. II. 1813 are not applicable to the case. N. A. R. vol. 6, page 42.

Case of the podar of a collectorate appropriating money held in deposit.

4356. A podar of a collectorate made away with a sum of money received by the collector for the purpose of being, and ordered by him to be, held in deposit: the money did not appear as an item in the memorandum of cash balance, &c., on a change of officers: the podar was held guilty of embezzlement of public money, and was sentenced to imprisonment for one year without labor. N. A. R. vol. 6, page 10.

Case of a gomashtah of a commercial resident appropriating advances

4357. The gomashtah in the factory of a commercial resident was convicted of having received on a private account the sum of 2,500 rupees of the public money, and converted it to his own use, and was sentenced to imprisonment for 2 years; and a writer in the factory was sentenced as an accomplice to imprisonment for one year. N. A. R. vol. 2, page 277.

Case of a dak-moonshee making use of public money.

4358. A dak-moonshee, convicted of embezzlement, or rather of making use of the public money, to the extent of 25 rupees, was sentenced, adverting to the confinement and

disgrace which he had already undergone, to imprisonment for 6 months without labour. N. A. R. vol. 4, page 332.

4359. A cashkeeper on the establishment of a tuhseeldar, was convicted of having removed a sum of money from the public treasure chest without authority ; and, although he might not have intended eventually to embezzle the money, was held guilty of a misdemeanor within the provisions of Reg. II. 1813, and sentenced to imprisonment in the civil jail for one year. N. A. R. vol. 2, page 376.

Case of a cashkeeper removing public money, the intent to embezzle not proved.

4360. A servant attached to the imambarrah of Hooghly was convicted of embezzlement, in having fraudulently made away with five bags of money containing 5,000 rupees from the treasury of the trust-estate above mentioned, and substituted five bags of pice in lieu thereof, and was sentenced to imprisonment for five years without labour. N. A. R. vol. 4, page 166.

Case of a private servant guilty of embezzlement.

4361. A private servant, the mohurir in an indigo factory, converted to his own use a sum of money given to him by his employer to pay the expences of a criminal prosecution which the prisoner was about to institute; and retained in his possession with the seal unbroken a letter containing a bank-note for 500 rupees, which he had been directed to put into the post office; being committed on a charge of theft and retaining knowingly in his possession stolen property, he was found guilty of embezzlement, and sentenced to imprisonment for two years without labour. N. A. R. vol. 4, page 152.

Case of a private servant making use of money given to him to be employed in a particular manner.

4362. A private agent falsifying his accounts, and embezzling the money of his employer, was held guilty of a breach of trust only, more properly cognizable in the civil than in the criminal court. N. A. R. vol. 1, page 274. *See paras.* 4326 *and* 4343.

Private agent falsifying accounts held guilty of a breach of trust only.

SECTION II.

OF FRAUD.

Precedents.

4363. The obtaining possession of property by fraud, is not punishable as theft under the provisions of Reg. XII. 1818; if, in such case, the magistrate considers that the punishment which he is competent to award under his general powers is inadequate to the degree of criminality of the offence, he must commit the offender for trial before the sessions court. Where a prisoner was convicted before the magistrate of having fraudulently passed an unfinished and unsigned note of the India bank, purporting to be for one hundred rupees, and having thereby fraudulently obtained possession of cloths to the value of one hundred rupees, and the magistrate sentenced him to stripes and imprisonment with labor for two years; the nizamut adawlut annulled his order as illegal, and directed him to commit the prisoner for trial before the session judge. Const. No. 684.

The fraudulently obtaining possession of property is not punishable as theft. If the magistrate considers such case beyond his general powers, he must commit it to the sessions.

4364. There is no law which authorizes criminal prosecutions for false and unfounded claims preferred in a civil court, although fines may be imposed on that account by civil courts in certain cases; as *e. g.* sect. 12, Reg. III. 1793; sect. 3, Reg. XIII. 1796; and cl. 10, sect. 3, Reg. XXVI. 1814. Reports *L. P.* 1854, part 1, page 477.

To institute a false claim in a civil court does not constitute a fraud punishable in a criminal court.

The execution of two sales of the same estate to several persons, is a fraud.

4365. Where the prisoners were convicted of having executed two sales of the same estate to several persons, they were held guilty of fraud; but as they had been tried on a charge of forgery in having fraudulently antedated one of the deeds of sale to the prejudice of the first purchaser, they were discharged without punishment, the offence of which they were convicted being held distinct from that charged: at the same time it was declared that they were still liable to be tried for the fraud. N. A. R. vol. 2, page 50.

So, where the second engagement was a fictitious lease from the lessor to himself under another name.

4366. A zumeendar, shortly after having granted a lease of certain lands, executed a fictitious lease to himself in the name of another person with a view to oust the first lessee. This was held to be a fraud punishable by the criminal courts; and he was sentenced to pay a fine of 5,000 rupees. N. A. R. vol. 6, page 2.

Obtaining a frank on false pretences.

4367. A fraud on the post office, by means of procuring a frank on a false pretence, was held punishable by a session judge, under the discretionary power vested in him by cl. 7, sect. 2, Reg. LIII. 1803,* by a pecuniary fine commutable in default of payment to a short imprisonment. N. A. R. vol. 3, page 130.

* *v. para.* 1314.

The using false weights or measures is a misdemeanor.

4368. The offence of using weights and measures short of what is recognized as the current standard of the place or district, is punishable as a fraud by the magistrate under the general regulations. The magistrate, however, cannot prescribe a current standard of weight. Const. No. 1274.

False personation.

4369. False personation(a) for one's own advantage is an offence under the Mahomedan law; no specific penalty is laid down for the offence, but the punishment is at the discretion of the hakim with a view to restrain the offender, respect being had to the circumstances of the offender, and the character of the offence, which is apparently in itself of a trivial nature. A prisoner, who claimed the raj and zumeendaree of Burdwan, was convicted of false personation for his own advantage, and was sentenced to pay a fine of 1000 rupees, and in default of payment to imprisonment in the zillah jail for six months. N. A. R. vol. 5, page 122. A prisoner convicted of falsely personating a collectorate peadah and uttering a forged parwana, was sentenced to imprisonment for 5 years with labor and irons. N. A. R. vol. 6, page 337. On conviction of personating an officer of the dacoity commissioner, seizing persons and extorting money, the prisoner was sentenced to 3 years' imprisonment with labor and irons. Reports *L. P.* 1856, part 2, page 110.

4370. Where the prisoner obtained food from the villagers under false pretences, but not under the pretence that he was in government employ, it was held that he was guilty of no offence punishable under the law. Reports *W. P.* 1856, part 1, page 212.

Case of a mokhtar attesting a confession with a false signature.

4371. A mokhtar, in attesting the confession of a person charged with a criminal offence, wrote a false name, in order to evade being sworn on the trial; and was sentenced on conviction to imprisonment for one year. N. A. R. vol. 5, page 20.

(a) The bare fact of personating another for the purpose of fraud, is no more than a cheat or misdemeanor at common law, and is punishable as such: in most cases of this kind, however, it is usual, where more than one are concerned in the offence, to proceed as for a conspiracy. *Russell and Roscoe.*

SECTION III.

OF EXTORTION, BRIBERY, AND CORRUPTION.

Local government, or head of department may prosecute subordinate officer on the part of government upon charges of corruption, &c.

4372. Whenever the local government, or the head officer of a department or office under government, shall be of opinion that there are good grounds for making a public enquiry into the truth of any imputation of corruption, extortion, embezzlement, or other malversation committed at any time during tenure of office, by any ministerial or police officer, subject to the jurisdiction of the courts of the British government and subordinate to such government; or employed in such department or office, as the case may be, it shall be lawful for such government, or any such head officer as aforesaid, to prosecute such officer on the part of government in a criminal court, or to nominate some person to conduct such prosecution; and it shall also be lawful for such government, or head officer as aforesaid, in their or his discretion, to undertake on the part of government the prosecution in a criminal court of any such charges as aforesaid, which may be brought by an aggrieved private party against any such ministerial or police officer; and such prosecutions as aforesaid shall not be barred, or affected, by reason of the party prosecuted having ceased to be in the service of government at the time at which the charge may be brought against him. Act XXXII. 1852, sect. 1.

or undertake prosecution brought by a private person.

Prosecution not barred by service having ceased;

but must be sanctioned by controlling authority. *See para.* 2560.

4373. Provided always that no collector, magistrate, nor head of an office in the salt, abkaree, or customs department, under the grade of commissioner, shall commence or undertake a prosecution under this Act, until he shall have obtained the permission of the court, board, or officer to whom he is immediately subordinate, to institute the same. Act XXXII. 1852, sect. 2.

Officer engaged in prosecution, or his assistants, not to act as judge.

4374. No collector, magistrate, judge, or other officer, who may prosecute any officer under this Act, or cause such prosecution to be instituted, or who may conduct any preliminary investigation into the conduct of such officer connected with such prosecution, nor any of his deputies, assistants, or subordinate officers, shall act as judge in any such prosecution. Act XXXII. 1852, sect. 3.

Police officers guilty of corruption, &c. may be prosecuted in the criminal or in the civil court.

4375. If a police tuhseeldar, or a police darogah, or any officer under his authority, is guilty of corruption, extortion,(a) or oppression, or commits any act repugnant to this regulation, he is liable to be committed by the magistrate to take his trial for the same before the sessions court, or to be prosecuted for damages in the civil court, at the option of the party injured. *Beng.* Reg. XXII. 1793, sect. 22. *Ben.* Reg. XVII. 1795, sect. 20. *Ced. Prov.* Reg. XXXV. 1803, sect. 21. C. O. No. 35 of vol. 1.

(a) In English law, extortion is defined to be the taking of money by an officer by colour of his office, either where nolle at all is due, or not so much is due, or where it is not yet due. So the refusal of a public officer to perform the duties of his office until his fees have been paid, is extortion. So it is extortion for a ferryman to take more toll than is due by custom. So when the farmer of a market erected such a number of stalls that the market people had not space to sell their wares, it was held that the taking money from them for the use of the stalls was extortion. Several persons may be indicted jointly, if all are concerned; for in this offence there are no accessaries, but all are principals. *Roscoe.*

Bribery and corruption on the part of native ministerial officers how punishable.

4376. Bribery and corruption on the part of native ministerial officers in the revenue [or any other] department, clearly amount to a misdemeanor according to the Mahomedan law, and are punishable as such by the session judge under the rule laid down in cl. 7, sect. 2, Reg. LIII. 1803; and by the magistrate to the extent of the powers vested in him by the regulations, when such punishment appears to him, on a consideration of all the circumstances of the case, to be adequate to the degree of criminality of the accused. Const. Nos. 237, and 1002.

Case of commitment when the magistrate was competent to pass final sentence.

4377. Where a police burkundaz was charged with taking a bribe of three rupees and was committed to take his trial for that offence, the nizamut adawlut held that the magistrate under the above rule was fully competent to pass the final sentence, and quashed the proceedings held before the session judge, as well as the commitment, directing the magistrate to dispose of the case himself. N. A. R. vol. 5, page 43.

In such cases prosecutor may be required to give security for his attendance.

4378. A magistrate is competent, whenever he may see reason to suspect any charge of corruption or extortion brought against his police officers to be false and unfounded, to call on the person preferring the charge to give security for his attendance until the final decision of the case. Const. No. 731.

If a charge of corruption is not proved, the magistrate may commit the accuser for perjury, if he thinks proper.

4379. A charge of corruption made before a magistrate not having been established, the magistrate is authorized to commit the accuser to take his trial for perjury at the instance of the party accused, should he find sufficient grounds for so doing; and the commitment is not illegal, though made pending an appeal from the magistrate preferred by the original accuser to the sessions court.(a) With a view however to avoid conflicting decisions, it was considered advisable to postpone the trial for perjury, until the appealed case was disposed of; the question of the prisoner's being innocent or guilty of the alleged perjury, resting on the truth or falsehood of the original charge. N. A. R. vol. 1, page 263.

The giving a bribe is a misdemeanor;

4380. The act of giving bribes to the amlah of a public officer for corrupt purposes, is clearly a misdemeanor both according to the English and Mahomedan law; and, though not specifically mentioned in the regulations, the individual committing it is unquestionably liable to a criminal prosecution. Const. No. 522.

and therefore the person administering it cannot be compelled to criminate himself.

4381. As the delivery of a bribe is a criminal act, and renders the person delivering it subject to a criminal prosecution as well as the receiver, a court of justice cannot compel a person to give evidence on oath touching a bribe, alleged to have been administered by himself. Const. No. 757. But he is competent to give such evidence against the person bribed. Reports *W. P.* 1855, part 2, page 81.

The sufferers in a case of extortion are competent to give evidence against the accused.

4382. The Mahomedan law rejects, in a case of extortion, the evidence of all persons who have contributed to the extortioner's demand; but this doctrine has been twice overruled, being considered by the nizamut adawlut absurd and inadmissible. N. A. R. vol. 2, page 341; and vol. 4, page 286.

(a) Under the present law, an appeal would not lie from the order of a magistrate dismissing the charge.

Moonsiffs, sudder ameens, and principal sudder ameens, guilty of corruption, &c. how punishable; but not liable for error of judgment.

4383. Moonsiffs, sudder ameens, and principal sudder ameens, are liable (in addition to an action in the civil court) to a criminal prosecution for corruption, extortion, or other misdemeanor committed by them in the discharge of any part of their duty; and, on conviction before the sessions court, are subject to fine and imprisonment proportionate to the nature and circumstances of the case; but no moonsiff, sudder ameen, or principal sudder ameen, is liable to be prosecuted for want of form or for error in his proceedings or judgments; nor is any process to be issued against any such officer who is charged with corruption, extortion, or any oppressive and unwarranted act of authority, unless the judge is previously satisfied by sufficient evidence, that there is reason to believe the charge to be well founded. Reg. XXIII. 1814, sect. 10, cl. 2; and sect. 67. Reg. V. 1831, sect. 26, cl. 5.

Prosecution not allowed without the sanction of the judge.

Such cases are cognizable in the first instance only by the civil judge; he may make the case over to the magistrate, or direct the government vakeel to prosecute, but he cannot direct the commitment.

4384. Under the above rule a charge of bribery, corruption, or extortion against a moonsiff is cognizable in the first instance only by the civil judge, who, after the requisite preliminary enquiry, is either to give or refuse his assent to a criminal prosecution; which in the former case, should be conducted by the complainant before, and be disposed of by, the magistrate as in any other case of misdemeanor. But this is not to be considered as barring the right of the judge to direct the vakeel of government to prefer a charge of bribery, &c., against a moonsiff, and to conduct the criminal prosecution on the part of government, whenever he may deem this measure expedient for the ends of justice. The judge, however, must confine himself to the preliminary enquiry, and cannot direct the magistrate to commit the case to the sessions; and where a judge pursued a different course, the trial was quashed by the nizamut adawlut. Const. Nos. 781, and 1069. N. A. R. vol. 5, page 151.

Ameen appointed for partition of estate guilty of corruption.

Prosecution to be at the instance of the collector.

4385. If an ameen [appointed by a collector to make the partition of an estate] is convicted before the magistrate of the zillah of receiving, or allowing any other person to receive, directly or indirectly, any money or effects, or other property from the sharers, or from any person or persons on their behalf, in opposition to his oath [in which he declares that he will not directly or indirectly receive or allow any other person to receive any fee, present, or reward whatever, from any of the sharers or any persons on their behalf, on account of the division or any matter connected therewith; and that he will not derive any advantage or emolument from his appointment, excepting such as may be expressly allowed to him, and be authorized by this regulation], he is to be sentenced to pay a fine to government of three times the amount of the money or value of the property so received by him, or by any other person with his permission, and to imprisonment not exceeding six months; and all prosecutions before the magistrate under this clause are to be for a criminal misdemeanor at the instance of the collector of the district, through the vakeel of government. He is also liable to a suit for the same offence in the civil court. Reg. XIX. 1814, sect. 13, cl. 2.

Native servant of a public officer extorting money on the plea of using his influence in regard to the decision of a case.

4386. If a native servant, or dependant, of any judge of a civil or criminal court of judicature, not being a public officer attached to the court, extorts, or receives, directly or indirectly, any money or other valuable consideration, under any pretence whatever, from any party or person, on account of any suit to be instituted, or that is depending or has

been decided in the court, he is to be committed as for a contempt of court, and to be punished by a fine equal to treble the sum of money extorted or received, or by imprisonment at the discretion of the court; and the judge is required to discharge such servant or dependant, and never to employ him directly or indirectly, in his public or private capacity. If the offender does not appeal against the decree within the limited time, or if an appeal does not lie from the decision, or if the decision is confirmed in appeal, the court by which the final decree is passed, is to transmit a copy of it to the government, who, in addition to the penalties or punishments specified in the decree, are, if there appear grounds for so doing, to declare the offender incapable of serving government in any capacity. *Beng.* Reg. XIII. 1793, sect. 11. *Ced. Prov.* Reg. XII. 1803, sect. 14.

This does not apply to the case of a private servant taking money to procure an official situation.

4387. Where an individual presented a petition to a magistrate in court, stating that he had paid 200 rupees to a private servant of his (the magistrate's) for an official situation, who had failed to procure the appointment or to refund the money,—the nizamut adawlut were of opinion that the charge should not be investigated and decided agreeably to the above rule, as its provisions are exclusively applicable to the case of a private servant employing his influence with his master in the decision of a suit pending before the court. The magistrate was directed to exercise his discretion in passing orders in such cases, the petitioner if dissatisfied being of course at liberty to appeal. Const. No. 539.

Native officers employed in the customs, making unauthorized collections, liable to dismissal, and to a criminal prosecution.

4388. Any native officer employed at the custom houses or chokees, who is proved to have levied any collections whatever, either as customs, duties, commission, fees, or under any other denomination, excepting such collections as are or may be authorized by this or any other regulation subsequently enacted, is of course liable to be dismissed from his employment under the rules provided in such cases by Reg. V. 1804, and Reg. VIII. 1809. Complaints against native officers employed under the collectors of customs for offences of this nature, are moreover to be considered cognizable by the magistrates; and

What punishment may be adjudged in certain cases.

any such native officer, on being convicted before a magistrate of having detained or stopped goods in any unauthorized manner; or of having exacted, under any plea or pretence whatever, a present, fee, or other consideration for the passage of goods or otherwise, in violation of the regulations of government, is to be deemed guilty of extortion, and is liable to be sentenced to pay a fine, not exceeding 200 rupees, and to imprisonment not exceeding 6 months, or to corporal punishment [now commutable to imprisonment for one year], according to the nature and circumstances of the case, and the condition in life of the offender; and if the fine so adjudged be not paid, it is to be commutable to a further period of imprisonment, not exceeding 6 months, as provided with respect to other sentences of the magistrate by sect. 19, Reg. IX. 1807. The party aggrieved is at the same time at liberty to prosecute the offender for damages in the dewanny adawlut. Reg. IX. 1810, sect. 38.

So, native persons, not employed in the customs, exacting customs, or duties.

4389. All native persons, not being officers employed by government in the collection of the government customs, or authorized by any regulation to collect customs or duties, who exact customs, or duties, of any denomination, on any pretence, whatsoever, whether as principals or agents, are likewise to be deemed guilty of extortion; and on

conviction before a magistrate are liable to the penalties of fine and imprisonment to the same extent, and with the same qualification for commuting the fine to further imprisonment if it be not paid, as the magistrate is empowered to adjudge against native officers convicted of extortion under the preceding section: and the party aggrieved is in like manner also at liberty to prosecute the offender for damages in the dewanny adawlut: but nothing contained herein is to be construed to authorize the magistrate to inflict corporal punishment in any such case on any ground whatever. Reg. IX. 1810, sect. 39.

This is restricted to authorized customs exacted by unauthorized persons.

4390. This section applies only, to "government customs and duties" levied by unauthorized persons; and does not warrant the punishment of persons who have established a ghaut on a river and have collected tolls. But a complainant is at liberty to institute a charge of that nature; and if it be proved that the tolls were compulsorily taken, and without authority, the parties so levying them would be liable to punishment. Reports *L. P.* 1855, part 2, page 849.

Private exactions.

Meaning of the term "exact."

4391. The term "exact" in the above sections, must be construed to apply to the actual collection, and not to the mere demand of the illegal duties adverted to therein; the demand however is a misdemeanor under the regulations and Mahomedan law. Const. No. 76.

This is not applicable to the case of a zumeendar collecting a cess established by custom, and sanctioned by revenue officers.

4392. The rules relative to the abolition of the sayer duties, and the above provision, are not to be held applicable to any item of sewaee collections or cess levied by malgoozars and others according to ancient custom, which has been or shall be sanctioned by a collector or other superior revenue authority, not being a tax on the transport, export, or import of goods or merchandise, or other tax or duty specifically prohibited: but after the settlement of any village or mahal has been made in the manner specified in sect. 9, Reg. VII. 1822, the rules and provisions aforesaid are applicable to all cesses and collections not sanctioned in the manner specified in that section. Reg. IX. 1825, sect. 9.

Example.

4393. Thus, it was held that zumeendars could not be prohibited from levying "choongee," a cess sanctioned by established custom, within the precincts of their estates.* Const. No. 973.

* *v. para.* 2457.

Custom house officers guilty of corruption, and persons offering bribes to such officers, liable to what punishment.

4394. Any custom house officer whatsoever, who demands or accepts any gratuity, not authorized by any existing regulation or order of government, in consideration of doing, or of omitting to do, any act in his official capacity, is to forfeit for every such offence the sum of 500 rupees; and any person who offers a bribe to any custom house officer in order to induce such officer to act in a manner inconsistent with his duty, is to forfeit a like sum; and these penalties are to be adjudged, on conviction before any magistrate or justice of the peace of the town, district, or place where the custom house is established, by such magistrate, and in default of payment any person so convicted is to be committed to the civil jail of the city or district until the fine be paid, or for a period not exceeding six months. Act XIV. 1836, sect. 13.

Ghaut manjees not to be recognized by the authorities.

4395. The local authorities are not to interfere with ghaut manjees further than steadily to refuse to recognize their claims to make exactions, and promptly to punish every attempt illegally to enforce those claims, and especially the detention of boats without the

consent of the owners, or other acts founded on pretended authority. The ghaut manjees are in fact agents for hiring boats, and of course are entitled to make a charge for their trouble; and therefore, beyond the above precautions, the suppression of the custom must be left to the mutual interests of the parties concerned in hiring and letting out boats. Const. No. 606.

Precedents.

Extortion—

by police officers;

4396. A police darogah convicted of levying a general contribution from the village, in which the witnesses to a case of theft under enquiry resided, was sentenced to imprisonment without labour in the civil jail for one year; N. A. R. vol. 2, page 341. When two burkundazes were convicted of extorting money by violence from persons in their custody on an accusation of affray, one of them who had been convicted on another charge of extortion at the same sessions, and sentenced to two years' imprisonment, was sentenced to imprisonment for an additional period of one year; and the other, who appeared less culpable, to imprisonment for 6 months; N. A. R. vol. 4, page 286. Two prisoners, not in the service of government, convicted of extorting several sums of money from the villagers under colour of a fabricated order, purporting to have been issued from a police thana, were sentenced each to imprisonment for 2 years; N. A. R. vol. 5, page 112. A tubseeldar of a pergunnah and his jemadar, convicted of extorting bonds to a large amount from a zumeendar, and compelling him to grant a farm with a view of realizing the amount from the profits, were sentenced each to imprisonment for one year without labor in the civil jail, and to pay a fine to government of 1000 rupees, or in default of payment to twelve months' further imprisonment. N. A. R. vol. 3, page 37.

by persons not in the service of government;

by a tubseeldar.

Police darogah allowing a criminal charge to be settled by private adjustment.

4397. A police darogah allowed a compromise of a case of theft to be effected by the relations of the parties concerned, and was afterwards charged with corruption therein; but his motive in so doing was not considered corrupt, as he had immediately reported the circumstances for the orders of the magistrate; and he was accordingly sentenced to be merely reprimanded for deviating from a specific rule in the regulations, which prohibits police officers from suffering accusations to be settled by private adjustment; [*see para.* 1524; but in some cases of theft and burglary the police officers may now allow such compromises to be made, *see para.* 2276]. N. A. R. vol. 1, page 180.

Corrupt receipt of money.

4398. A person convicted of the corrupt receipt of money, while in office under a collector, in order to procure from the collector an order for the removal of a sezawul, was sentenced to be dismissed from office, and to be imprisoned in the criminal jail for 3 years; N. A. R. vol. 1, page 377. A prisoner was charged with the corrupt receipt of 1500 rupees, in having, while holding the situation of kotwal, by his private influence procured the office of darogah for an individual for that sum: the receipt of a portion of the sum in question was established, and the prisoner was unable to prove on what account; but he was acquitted of the charge by the nizamut adawlut, as it appeared that the money had been paid long after his resignation of and secession from office, and as there was no sufficient proof of a corrupt agreement. N. A. R. vol. 2, page 448.

SECTION IV.

OF EXTORTION BY DHURNA.

Magistrate how to proceed on receiving a charge of dhurna.

4399. On a complaint in writing being presented to a magistrate against any brahmin or brahmins, or against any other person or persons of whatever description, for sitting dhurna,(a) the magistrate, upon oath being made to the truth of the information, is to issue a warrant or summons (as the case may require) under his seal and signature, for the apprehension, or appearance before him, of the person or persons thus complained against. On the accused being brought before the magistrate, he is to inquire into the circumstances of the charge, and to examine the accused and the complainant, and also such other persons (whose depositions are to be taken on oath [or solemn declaration]) as are stated to have any knowledge of the misdemeanor alleged, and to commit their respective depositions to writing: and, after this inquiry, if it appears to the magistrate that the misdemeanor charged was never committed, or that there is no ground to believe the accused to have been concerned in committing it, the magistrate is to cause him or them to be forthwith discharged, recording his reasons for the same. On the contrary, if it appears to the magistrate that the misdemeanor charged was actually committed, and that there are grounds for believing the accused to have been concerned in the commission of it, the magistrate is (except in the cases mentioned in sect. 7) to cause the accused to be committed to prison, or held to bail, according as in his discretion he judges proper, for trial before the sessions court; and is to bind over the complainant to appear and carry on the prosecution, and the witnesses to attend and give their evidence. Reg. VII. 1820, sect. 3.

Mode of trial before the sessions court.

4400. The trial of persons charged with dhurna, is to take place before the sessions court, in the same mode as is prescribed for other trials by the existing regulations; and in

(a) "The offence denominated dhurna implies, in its received acceptation, the practice of illegal duress by individuals for the extortion of money, or for the recovery of debts without authority from the civil magistrate; and also, without such authority, for retaining or recovering the possession of land, or for carrying any other point of real, imaginary, or pretended interest or right."—"The act of dhurna is a misdemeanor punishable in Mahomedan law, under the head of zulm, or oppression." *Preamble to Reg. VII.* 1820. In the preamble to Reg. XXI. 1795, the offence is thus described :—"On similar principles" (*see the first portion of para.* 3941) "these brahmins, to realize any claim or expectation, such as the recovery of a debt, or for the purpose of extorting some charitable donation, frequently proceed either with some offensive weapon, or with poison, to the door of another inhabitant of the same town or village, and take post there in the manner called dhurna; and it is understood, according to the received opinions on this subject, that they are to remain fasting in that place until their object be attained; and that it is equally incumbent on the party, who is the occasion of such brahmin's there sitting, to abstain from nourishment until the latter be satisfied. Until this is effected ingress and egress to and from his house are also more or less prevented; as, according to the received opinions, neither the one nor the other can be attempted, but at the risk of the brahmin's wounding himself with the weapon, or swallowing the powder or poison, with which he may have come provided. These brahmins however are frequently obliged to desist, and are removed from sitting dhurna by the officers of the courts of justice without any ill consequence resulting, it having been found by experience, that they seldom or ever attempt to commit suicide, or to wound themselves or others, after they are taken into the custody of government."

lieu of the vyavastha hitherto taken from the pundit, (a) the Mahomedan law officer of the sessions court is to write his futwa, declaring whether the offence charged is established or not against the accused. Reg. VII. 1820, sect. 4.

What penalties are adjudicable by the sessions court.

4401. On conviction of the offence of dhurna before a sessions court, the penalties adjudicable are to be as follow; namely, imprisonment in the civil jail for a term not exceeding one year, and fine not exceeding one thousand rupees, commutable if not paid to further imprisonment for a term not exceeding one year. Reg. VII. 1820, sect. 5.

Trials when referrible.

4402. Trials held before a sessions court in cases of dhurna, are referrible to the nizamut adawlut or not according to the rules applicable in other trials. Reg. VII. 1820, sect. 6.

In what cases magistrate may pass sentence, and to what extent.

4403. It is competent to the magistrates, in charges for the offence of dhurna, which they are of opinion, from the circumstances, do not require commitment to the sessions court, to hear the evidence against and for the accused; and, if they consider the accused to be convicted, to pass sentence of fine not exceeding two hundred rupees, commutable if not paid to imprisonment in the civil jail for a period not exceeding six months. Reg. VII. 1820, sect. 7.

Example of case in which the circumstances did not amount to dhurna.

4404. Where a person seated himself at the door of a modee's shop, distant a hundred paces from the house of the party whom he wished to compel to do him justice, and remained there without any nourishment, except sherbet, for 16 days, it was held that the circumstances did not constitute the offence of sitting dhurna. N. A. R. vol. 1, page 164.

4405. Where the prisoner took up a position at the door of the prosecutor's house, and forbad all egress and ingress, with the sole object of watching the premises until the other defendants arrived and forcibly ejected the prosecutor, it was held that this did not constitute the offence of dhurna as defined above. Reports *W. P.* 1853, part 2, page 1427.

Precedents.

Cases which occurred before the enactment of the above provisions.

4406. A prisoner convicted of sitting dhurna, and extorting a present sum of 25 rupees, and a bond for 165 more, in payment of an alleged debt, was sentenced to forfeit all title to the claim for the realization of which the misdemeanor was committed, and to pay a fine to government of 100 rupees, or in default of payment to be imprisoned in the civil jail for the period of 6 months: the court directed the magistrate, in the event of the fine being paid, to give the prosecutor 25 rupees out of the amount, in reimbursement of the sum extorted from him; and in default of the payment of the fine, or of a sufficient part of it to provide for the repayment of the above sum, to inform the prosecutor that he was at liberty to bring a civil action for the recovery of the same: N. A. R. vol. 1, page 205. Where the prisoner, having come to the prosecutor's house with a razor in his hand, cut himself on the thigh, and sat down at the door declaring that he would not stir thence until the prosecutor gave him 25 rupees, and the prosecutor thereupon gave him the sum demanded; he was sentenced, in consideration of the period during which he had

(a) It was formerly considered as an offence solely against the Hindoo law; and therefore the pundits were required to give an exposition of the law of the *sastra*; but, now, as quoted in the previous note, it is considered, as in the case of other crimes and misdemeanors, as an offence against Mahomedan law under the head of zulm.

already been in confinement (5 months), to be imprisoned in the civil jail for 3 months, and to pay a fine of 50 rupees to government, or in default to be imprisoned for a further period of 3 months: the same order was passed in regard to the reimbursement of the prosecutor from the fine, if paid, as in the last case: N. A. R. vol. 1, page 207. But both of these cases occurred before the enactment of Reg. VII. 1820.

Case attended with homicide in assisting in the suicide of one of the persons sitting dhurna.

4407. Where the prisoners, fakeers of a particular class called *sutrah shahi*, who go about beating sticks and consider themselves entitled to contributions from any bazar or fair they please to go to, were convicted of dhurna, and assisting in the suicide of one of their companions in furtherance thereof, they were sentenced, in consideration of their extreme ignorance and the other circumstances of the case, each to imprisonment for 5 years with labor: N. A. R. vol. 2, page 409. Where three prisoners were convicted of having, in concert with several others, sat in dhurna over an old man aged 65, and of having thereby deprived him of food and water, in consequence of which he died the following day, two of them were sentenced to imprisonment for 2 years, and a third, in consideration of his youth, to imprisonment for 6 months: N. A. R. vol. 3, page 202.

Case attended with homicide of the person over whom the prisoners were sitting dhurna.

CHAPTER V.

OF CATTLE TRESPASS.

Cattle doing damage to land may be seized and impounded.

4408. It shall be lawful for the cultivator or occupier of any land to seize or cause to be seized any cattle trespassing on such land, and doing damage to such land or any crop or produce thereon, and to convey them without unnecessary delay to the pound established for the village or township in which the land is situate. Village and other police officers, when called upon, shall give their aid to cultivators and occupiers making such seizures. Act III. 1857, sect. 2.

Where pounds shall be established.

4409. Pounds shall be established at the thanas or district police stations, and at such other places as the magistrate, under the orders of the local government, may determine. The village or villages by which every pound is to be used shall be determined and notified by the magistrate. Act III. 1857, sect. 3.

Control and management of pounds.

4410. The pounds shall be under the control of the magistrate of the district, and for each pound a pound-keeper shall be appointed, who shall keep such registers and furnish such returns as the local government shall direct. Act III. 1857, sect. 4.

Seizures to be registered.

4411. When cattle are brought to a pound, the pound-keeper shall enter in his register the number and description of the animals, the name and residence of the seizer, and the name and residence of the owner if known, and shall give a copy of the entry to the seizer.

Pound-keeper to take charge of and feed cattle.

The pound-keeper shall take charge of and feed the cattle until disposed of as hereinafter directed. Act III. 1857, sect. 5.

Fines.

4412. For every head of cattle impounded as aforesaid, a fine shall be levied according to the following scale :—

	Annas.
Camel or Buffalo	8
Horse or Tattoo, Bull, Bullock, or Cow	4
Calf or Ass	2
Sheep or Goat	1

and no cattle shall be released by a pound-keeper without the payment of such fine unless the release be ordered by competent authority. Act III. 1857, sect. 6.

Procedure if owner appear and claim the cattle.

4413. If the owner appear and claim the cattle, they shall be delivered to him on payment of the prescribed fine together with the expense of feeding the cattle at such rates as may from time to time be fixed by the magistrate; and the owner, on taking back his cattle, shall sign a receipt for them in the register kept by the pound-keeper. A schedule of the fines and of the rates of charge for feeding cattle shall be stuck up in a conspicuous place on or near to every pound. Act III. 1857, sect. 7.

Procedure if cattle be not claimed within a specified time.

4414. If the cattle be not claimed within seven days from the date of their being impounded, the pound-keeper shall make his report to the darogah or district police officer, who shall stick up in a conspicuous part of the police office a notice containing a statement of the number and description of the cattle, the place where they were seized, and the place where they are impounded, and shall cause proclamation of the same to be made by beat of drum in the village, and at the market place, nearest to the place of seizure. If the cattle be not claimed within seven days from the date of the notice, they shall be sold by public auction by the darogah or district police officer or an officer of his establishment deputed for the purpose. Act III. 1857, sect. 8.

Procedure if owner appear and refuse or omit to pay the fines and expenses.

4415. If the owner appear, and refuse or omit to pay the fines and expenses, the cattle or as many of them as may be necessary, shall be sold by public auction for the recovery of such fines and expenses by the darogah or other officer as aforesaid ; and the remaining cattle and the balance of the purchase money if any shall be delivered to the owner, together with an account showing the number of cattle seized, the time during which they have been impounded, the charge for fines and expenses, the number of cattle sold, the proceeds of sale, and the manner in which those proceeds have been disposed of; and the owner shall grant a receipt for the cattle delivered to him and for the balance of the purchase money paid to him (if any) according to such account. Provided always that, if a complaint against the seizure shall have been preferred under the provisions of section 14 of this Act, no sale shall be made until the case shall have been decided, nor otherwise than according to the order which may be passed in such case. Act III. 1857, sect. 9.

Sale to be stayed, if owner has complained to magistrate.

Police officers and pound-keepers not to purchase cattle at a sale under this Act.

4416. Police officers and pound-keepers are prohibited from becoming, directly or indirectly, purchasers of any cattle at a sale under this Act. Act III. 1857, sect. 10.

Disposal of sale proceeds, fines, and expenses.

4417. When cattle are sold under the provisions of this Act, the fines leviable and the expenses of feeding, together with the expenses of sale, if any, shall be deducted from the sale proceeds. The fines so recovered, as well as all fines received by the pound-keepers

under section 7, shall be transmitted to the magistrate by the darogah, or district police officer. The expenses of feeding realized by sale shall be paid over to the pound-keepers, who shall also retain and appropriate all sums received by them on account of such expenses under section 7. The surplus proceeds of the sale of unclaimed cattle shall be transmitted to the magistrate, who shall hold them in deposit for three months, and if no claim to them be preferred and established within that period, shall, at its expiry, dispose of them, as hereinafter provided. Act III. 1857, sect. 11.

Fines and unclaimed proceeds of sales to form a fund for the payment of pound keepers, &c.

4418. The sums received on account of fines and the unclaimed proceeds of the sale of unclaimed cattle shall form a fund which shall be available for the payment of any salaries, which may be allowed to pound-keepers under the orders of the local government or of expenses incurred for the construction and maintenance of pounds, or for any other purpose connected with the execution of this Act. Act III. 1857, sect. 12.

Penalty for forcibly opposing the seizure of cattle or rescuing the same.

4419. Every person who shall forcibly oppose the seizure of cattle doing damage to land or to crops or other produce of land, or shall forcibly rescue the same after seizure either from a pound or from the seizer when conveying or about to convey them to a pound, shall be liable for such offence to imprisonment, with or without labor, for a period not exceeding six months, or to a fine not exceeding five hundred rupees, or to both. Offences under this section shall be dealt with by the police officers according to the provisions of section 25, Regulation XX. 1817. Act III. 1857, sect. 13.

Owner may prefer complaint to magistrate within ten days from date of seizure of his cattle.

Procedure.

4420. Any person whose cattle shall have been seized and detained as doing damage to land or any crop or produce thereon, may prefer a complaint against the seizure, at any time within ten days from the date thereof, to the magistrate, or to any joint, deputy, or assistant magistrate, or other officer having criminal jurisdiction, authorized to receive and try charges without reference by the magistrate. The complaint may be either verbal, in which case the substance of it shall be taken down in writing by the magistrate or other officer as aforesaid, or written upon plain paper, and shall be preferred by the complainant in person, or by an agent personally acquainted with the circumstances. The magistrate or other officer as aforesaid, if on examination of the complainant or his agent he shall see reason to believe the complaint to be well founded, shall summon the party complained against, and shall proceed to make a summary enquiry into the case. If the seizure be adjudged illegal, the magistrate or other officer as aforesaid shall award to the complainant such damages, not exceeding in any case the sum of one hundred rupees, as he may deem to be a reasonable compensation for any loss or injury sustained from the unlawful seizure and detention, together with all expenses incurred by the complainant in procuring the release of the cattle; or, if the cattle have not been released, the magistrate or other officer as aforesaid, in addition to the award of damages, shall make an order for their release, and shall direct that the fines and expenses leviable under this Act shall be paid by the party who made the seizure. Moonsiffs and other judicial officers having original jurisdiction, and not invested with criminal powers, may be specially invested by the local government with the power of receiving and trying complaints under this section, and in the exercise

Damages for illegal seizure.

Moonsiffs and others may be invested with power to adjudicate under this section.

of such powers shall be subject to the same rules as assistants and other officers subordinate to the magistrate. Act III. 1857, sect. 14.

Impounding of cattle doing damage to roads, embankments, &c.

4421. Persons in charge of public roads, canals, embankments, and the like, may seize or cause to be seized any cattle doing damage to the sides or slopes of such roads, canals, embankments, and the like; and all the foregoing provisions of this Act shall be applicable to such seizures. Act III. 1857, sect. 15.

Impounding of stray cattle the owners of which are unknown.

4422. Village and other police officers shall convey to the pounds established under section 3 of this Act all cattle, the owners of which are unknown, found straying in any public road or place; and the provisions of this Act relative to the detention, release, and sale of cattle seized as trespassing and doing damage, shall be applicable to all cattle impounded as aforesaid. Act III. 1857, sect. 16.

Recovery of penalty for mischief committed by causing cattle to trespass.

4423. When any person commits mischief by causing cattle to trespass on any land, the penalty provided for such offence may be adjudged on the complaint of any person authorized to seize cattle under section 2 of this Act, or of any person who may have made advances for the cultivation of the land and delivery of the produce; and any fine which shall be so adjudged may be recovered by sale of the cattle by which the trespass was committed, or any portion of them, whether the cattle were seized in the act of trespassing or not, and whether such cattle are the property of the person convicted of the offence, or were only in his charge when the trespass was committed. Act III. 1857, sect. 17.

Penalty for damage caused to land or crops by pigs.

4424. Any person, being an owner or keeper of pigs, who, through neglect or otherwise, shall damage or cause or permit to be damaged any land or any crop or produce of land by allowing pigs to trespass thereon, shall be liable for such offence to a fine not exceeding ten rupees.

Application of fines.

All sums recovered under this and the last preceding section may be appropriated in whole or in part to compensate the complainant for damage proved to the satisfaction of the magistrate. Act III. 1857, sect. 18.

Saving of right of parties to institute a suit for the recovery of damages in any competent court.

4425. Nothing contained in this Act shall be held to prohibit any person, whose crops or other produce of land shall have been damaged by trespass of cattle, from instituting a suit for the recovery of damages in any competent court. Provided that any compensation which may have been paid to any such person by order of the magistrate, shall be set off and deducted from any sum claimed by or awarded to him as damages in such suit. Act III. 1857, sect. 19.

Local government may exclude any district, from the operation of this Act.

4426. The local government, with the sanction of the governor general in council, may exclude from the operation of this Act any district or tract of country to which its provisions may be judged unsuitable. Act III. 1857, sect. 20.

Interpretation.

4427. In the construction of this Act, words importing the singular number shall include the plural, and words importing the plural number shall include the singular; words importing the masculine gender shall include females; the word "magistrate" shall include a joint magistrate, or other officer lawfully exercising the powers of a magistrate; the expression "darogah or district police officer" shall, in the North-Western Provinces of the Presidency of Fort William, include a tuhseeldar or naib tuhseeldar entrusted with police powers. Act III. 1857, sect. 21.

CHAPTER VI.

OF INDIGO CULTIVATION.

Persons holding a summary award for the produce of a defined spot of land may apply for the aid of the police to prevent the removal of the plant.

4428. Any person in whose favor a summary award has been passed [under this Regulation] for indigo plant the produce of any defined spot of land, is entitled to place a watch over the same, and to prevent the cutting and removal of the plant in any manner contrary to the stipulations of his agreement; and in the event of any attempt being made to cut or remove the plant, it is competent to the person holding the decree to apply to the nearest police darogah, and to claim from him the assistance of the police in preventing such removal; it is moreover the duty of the police officers, and of all other officers, on such a decree being exhibited, to aid the person in whose favor it has been passed to the utmost of their power. Reg. VI. 1823, sect. 4, cl. 1.

A planter cannot demand the aid of the police to compel a ryot to fulfil his contract for the cultivation of indigo.

4429. In the case of a ryot entering into an engagement with an indigo planter for cultivation of a particular spot of ground, and afterwards wishing to evade the fulfilment of that engagement, the planter is not justified in cultivating the land by means of his own servants, nor has he a right to demand the assistance of the police for the purpose of compelling the ryot to fulfil his contract. His only legal remedy in such case is in the civil court. Const. No. 385.

How far the magistrate can interfere in cases of indigo disputes.

v. paras. 733 *et seq.*

4430. The magistrate can interfere in cases of indigo disputes, only when they are cognizable under Act IV. 1840; and in such cases he may depute his assistant to make a local investigation under the provisions of Reg. XI. 1824.* In disputes regarding indigo which do not come within the provisions of Act IV. 1840, the enquiry must be made and final decision passed in the civil court; to which court the magistrate must refer the parties in all cases in which he cannot act himself. Const. Nos. 652 and 661.

The ryot who has cultivated the crop is in possession, and not the planter from whom he has received advances. and where the ryot has taken advances from two parties, they must all be referred to the civil court.

4431. Where A, a ryot, complains against C, an indigo planter, as likely to carry off indigo plant grown by him, and states himself to have received advances from, and to have grown the disputed plant for B, another indigo planter; and C declares that he also has made advances to A, and that A has cultivated the plant for him, which however A denies; in the trial of such a case under Act IV. 1840, A is to be considered in possession of the disputed crop, and is to be allowed to deliver the disputed plant to either B or C as he may think fit; and an order may be passed by the magistrate prohibiting C from attempting to take forcible possession. C will of course have his redress in the civil court, and if he timely take his measures there, supposing his claim to be in reality a better one than that of B, he might upon giving security, on a summary enquiry, be enabled to cut and carry away the disputed plant. Const. No. 1359.

BOOK VII.

OF OFFENCES WHICH MAY AFFECT THE PERSON OR PROPERTY.

CHAPTER I.

OF CONSPIRACY.

Civil court cannot initiate proceedings before magistrate

4432. Charges of fraud and conspiracy, brought to light in the course of judicial proceedings, must be prosecuted by the aggrieved party in the criminal court. The civil courts have no power of initiating the proceedings in such cases. C. O. S. D. A. *W. P.* No. 11, April 5, 1853.

Evidence of accomplices, not approvers, insufficient.

4433. A conviction for conspiracy cannot be had on the evidence of accomplices only unless admitted to pardon by government. Reports *W. P.* 1851, page 293.

In a case of conspiracy to defame, the person conspired against must appear as prosecutor

4434. In an indictment for conspiring to defame by preferring a false charge of a heinous offence, the nizamut adawlut held it necessary that the person against whom the conspiracy was formed should appear as prosecutor; and, as the magistrate had made the government prosecutor without taking the evidence of the aggrieved party, and without any complaint on oath, the trial was annulled; and option was allowed to the person conspired against to stand forward as prosecutor. N. A. R. vol. 3, page 171. So, in Reports *W. P.* 1855, part 1, page 355. But the refusal of the person conspired against to prosecute was held insufficient to bar the trial, when the conspirators charged him with treason and the magistrate was induced to prosecute him on their representation. Reports *L. P.* 1858, page 177.

Exception

Conspiring to excite discontent among molungees by false statements is punishable.

4435. On a trial for conspiracy, it was held that exciting discontent among the molungees employed in the salt department, by false statements to the prejudice of government, was a punishable offence: and the sentence by the circuit judge of one year's imprisonment was confirmed. N. A. R. vol. 3, page 232.

Case of conspiracy to effect murder.

4436. Where four prisoners were convicted of conspiring together to murder a person of property, in order that the property might devolve upon the heir-at-law, himself one of the prisoners, and of having perpetrated a violent assault upon him in pursuance of the conspiracy, they were all sentenced to imprisonment with labor in irons for 14 years. N. A. R. vol. 3, page 88.

4437. Two prisoners convicted of a conspiracy to charge the prosecutor falsely with having in his possession government treasure obtained by a robbery, were sentenced to stripes and imprisonment for 7 years. N. A. R. vol. 1, page 224.

Case of conspiracy to charge a man falsely with felony.

NOTE.

By English law a conspiracy is an agreement between two or more persons—1. Falsely to charge another with a crime punishable by law, either from a malicious or vindictive motive or feeling towards the party, or for the purpose of extorting money from him.—2. Wrongfully to injure or prejudice a third person, or any body of men, in any other manner.—3. To commit any offence punishable by law.—4. To do any act with intent to pervert the course of justice.—5. To effect a legal purpose with a corrupt intent, or by improper means.—6. Conspiracies or combinations by journeymen to raise their wages, &c.—Thus, *under the first head*, a conspiracy to charge a man falsely with treason, felony, misdemeanor, is indictable; but it is not an indictable offence for two or more persons to consult and agree to prosecute a person who is guilty, or against whom there are reasonable grounds of suspicion. *Under the second head*, a conspiracy to impose pretended wine upon a man, as and for true and good wine, in exchange for goods; a conspiracy by a female servant and a man whom she got to personate her master and marry her, in order to defraud her master's relations of a part of his property after his death; a conspiracy to injure a man in his trade or profession; a conspiracy to charge a man as the reputed father of a bastard; a conspiracy to raise the prices of the public funds by false rumours, as being a fraud upon the public; a conspiracy by persons to cause themselves to be reputed men of property, in order to defraud tradesmen; a conspiracy to defraud the public by issuing and negotiating bills in the name of a fictitious and pretended banking firm; a conspiracy by violence, threats, contrivance, or other sinister means, to procure the marriage of a pauper of one parish to a pauper of another, in order to charge one of the parishes with the maintenance of both; for these respectively it has been holden an indictment will lie. But an indictment will not lie for a conspiracy to kill game, or to commit any other mere civil trespass. If however the parties conspire to obtain money by false pretences of existing facts, it is no objection to the indictment for conspiracy, that the money was to be obtained through the medium of a contract. *Under the third head*, a conspiracy to commit a felony or misdemeanor is indictable. *Under the fourth head*, a conspiracy by certain justices of peace to certify that a highway was in repair, without knowing that the fact was true, was holden to be indictable. So, where several persons conspired to procure others to rob one of them, in order, by convicting the robber, to obtain the reward then given by statute in such case, and the party who accordingly committed the robbery was afterwards convicted and actually executed, these persons were indicted for the conspiracy and convicted.—The nature of the offence requires that more than one person should be concerned in its commission; one cannot be convicted of it, unless he has been indicted for conspiring with persons to the jurors unknown. And a man and his wife cannot be indicted for conspiring together alone, because they are in law one person. But one person alone may be tried for a conspiracy, provided the indictment charge him with conspiring with others who have not appeared, or who are since dead. An agreement by several to do a certain thing may be the subject of an indictment for conspiracy, though the same thing done separately by the several individuals, without any agreement between themselves, would not be illegal, as in the case of journeymen conspiring to raise their wages; for each may insist on his own wages being raised; but if several meet for the same purpose, it is illegal, and the parties may be indicted for a conspiracy. So, where several persons conspired to hiss at a theatre, Lord Mansfield held it indictable, though each might have hissed separately. If several persons concur in the act, it appears that they will be all guilty of a conspiracy, notwithstanding they were not previously acquainted with each other. The offence of conspiring consists in the unlawful agreement, although nothing be done in pursuance of it, for it is the conspiring which is the *gist* of the offence.—*Archbold and Roscoe.*

CHAPTER II.

OF PERJURY.

Definitions and conditions.

What constitutes perjury;

4438. The crime of wilful perjury, subjecting the offender, on conviction, to the punishment stated in sect. 3 of this regulation, is hereby declared to be, giving intentionally and deliberately, before a court of judicature, magistrate, or other authorized public officer, a false deposition upon oath, or under a solemn declaration taken instead of an oath, relative to some judicial proceeding, civil or criminal, and upon a point material to the issue thereof. Reg. II. 1807, sect. 4, cl. 1.

and subornation of perjury.

4439. Subornation of perjury punishable under the preceding section of this regulation, is declared to be the crime of procuring or causing another person to commit the offence of perjury as above described. Reg. II. 1807, sect. 4, cl. 2.

Perjury may be committed in evidence on *simple* affirmation.

* *See paras.* 551 *and* 554.

4440. Any witness, admitted to give evidence on a simple affirmation under sects. 15 or 16, Act II. 1855,* wilfully giving false evidence is to be subject to be proceeded against in like manner, and to suffer, if convicted, the same punishment as if he had been sworn and had committed wilful and corrupt perjury. The indictment or charge is to be varied so as to meet the case. Act II. 1855, sect. 17.

It may be perjury though the false deposition does not relate to any judicial proceedings;

4441. In addition to the rules contained in sections 26, 30, and 33, Reg. XII. 1817 [regarding putwarees, *para.* 4461], it is hereby declared, that any person convicted before a sessions court, or the nizamut adawlut, of having given intentionally and deliberately a false deposition upon oath, or under a solemn declaration taken instead of an oath, before a public officer authorized to take the same, is to be deemed guilty of wilful perjury, and liable to the punishment for that offence, declared in sect. 9 of this regulation, although the deposition so taken does not relate to any judicial proceeding, provided it clearly appears to have been given falsely and criminally on a point material to the case in which the deposition has been taken. Reg. XVII. 1817, sect. 13, cl. 1.

and the procuring such false deposition is subornation of perjury.

4442. Any person convicted before a sessions court, or the nizamut adawlut, of having procured or caused another to commit the offence described in the above clause, is to be deemed guilty of subornation of perjury: and is to be liable to the punishment of that offence, declared in sect. 9 of this regulation. Reg. XVII. 1817, sect. 13, cl. 2.

It is perjury, if a witness wilfully gives two statements directly at variance with each other, on a point material to the issue.

4443. The mere fact of a witness having wilfully given two statements directly at variance with each other, on a point material to the issue of the case in which he gives his testimony, must be held to be perjury; and the deponent on conviction is punishable accordingly. This dictum is in accordance with the Mahomedan law; and supersedes the precedent in N. A. R. vol. 1, page 282, which ruled that it is essential to a conviction of perjury in such case, that the truth of one of the two contradictory statements should be satisfactorily established. C. O. No. 126 of vol. 3.

4444. And a conviction of perjury may be had, without reference to the truth or falsehood of the deposition made; as in a case of false personation. N. A. R. vol. 4, page 260; and vol. 5, page 144.

So, it may be, though the truth of the case does not appear.

4445. When a witness first denied his relationship to a certain person, and afterwards in the same deposition admitted it, and he was committed to the sessions for making two contradictory statements on oath, the nizamut adawlut quashed the commitment and directed that an indictment should be prepared against the prisoner for his first designedly false statement. It is only when there is no means of ascertaining which of two statements is true, or when it may be doubtful whether the true one can be clearly established, that a charge of contradiction in the statements should be drawn, either as the sole or second count. Reports *L. P.* 1854, part 1, page 338.

But the commitment should not be made for the contradiction, unless the truth be doubtful, or difficult of proof.

4446. But in such case it must be shown that the point involved in the contradiction is material to the issue, and that the prisoner manifested a deliberate intention to deceive the court. Reports *L. P.* 1854, part 2, page 476. Or to defeat justice. Reports *L. P.* 1856, part 1, page 851. The fact of the contradiction must be so plain and manifest as not to leave any room for doubting the deliberate and wilful character of the perjury. Reports *W. P.* 1853, part 2, pages 1322 and 1333; and *L. P.* 1855, part 2, page 772. And must be patent on the statements themselves; as, to swear an offence against A, and after an interval of months or years to be unable to recognize A, is not such a contradiction as necessarily involves perjury. Reports *L. P.* 1854, part 2, page 391; 1855, part 2, page 325; and *W. P.* 1854, part 2, page 231.(*a*).

Contradiction must be on a material point,

and manifest

on the statements themselves.

4447. A person producing in court a false witness through a vakeel, though himself absent, is guilty of subornation of perjury. N. A. R. vol. 5, page 67. Reports *W. P.* 1853, part 1, page 223.

Subornation may be committed by an absent person.

4448. It is frequently difficult to discriminate between perjury and wilful prevarication in a witness; and as much must necessarily depend upon the particular circumstances of each case, the nizamut adawlut did not consider it possible to lay down any general rule on the subject. But if the prevarication, though wilful and designed, does not amount to perjury, it is not punishable as a contempt of court.* Const. No. 1177. C. O. No. 128 of vol. 3. A mere equivocation or suppression of part of the truth, however morally culpable, is not punishable as wilful perjury. Reports *W. P.* 1855, part 2, page 492.

Difference between perjury and wilful prevarication.

* *v. para.* 1519.

4449. There can be no charge of perjury on a mere averment of want of recollection; for it is plainly impossible to establish against a party, by legal proof, that he recollected

Defect in recollection not perjury.

(*a*) It has also been ruled (Reports *L. P.* 1854, part 2, page 773) that the two contradictory statements, on which a charge of perjury is based, must have been made in the same case, for otherwise it is impossible to say in which the false testimony was given on a point material to the issue. But this appears questionable as a general rule; for where the fact, regarding which the two contradictory statements have been made, is material to the issue in each case, the perjury is complete, if the mere contradiction on a point material to the issue is sufficient proof of the perjury. See N. A. R. vol 2, page 202, quoted in para. 4519.

anything, which he has stated on his own part that he did not recollect.(a) Reports *L. P.* 1851, page 599.

That part of the false deposition upon which the perjury is assigned, must be material to the matter then under consideration.

4450. The perjury must refer to a point material to the issue of the case. Thus, where the prisoner first denied on oath, and after five days confessed, that he had had a meeting and conversation with a darogah suspected of levying contributions in his village, but there was no evidence to show the nature of the conversation, it was held that the false swearing did not amount to perjury according to the intent of the definition given above. N. A. R. vol. 2, page 314. So, where the prisoners deposed falsely on oath, in a trial for robbery, as to their relationship to each other, the point was held immaterial to the issue of the trial, because their testimony would have been admissible, and might have been sufficient to procure the conviction of the prisoner tried, even had they deposed truly as to that point.(b) N. A. R. vol. 4, page 10. So, although a column is devoted in the calendar of commitment to the witnesses to the apprehension, it does not necessarily follow that evidence as to the time, place, and manner of apprehension, is in every case material to the issue; and, where it was not so material, the prisoner was discharged. Reports *W. P.* 1855, part 2, page 214. But it appears to be sufficient if the perjury bears only a collateral reference to the point at issue. Thus, where a witness for the defence, in a trial for theft, swore falsely as to the degree of relationship in which he stood to the prisoner, with a view of inducing the court to give readier credit to the substantial part of his evidence, he was convicted of perjury, and sentenced to imprisonment for one year. N. A. R. vol. 4, page 259. So, where a witness deposed falsely as to the evidence which he had given in a previous suit, in order to conceal that his testimony

But it is sufficient if it is given with a view of inducing the court to give readier credit to the substantial part of the evidence.

(a) In English law it appears that "a man may be indicted for perjury, in swearing that he *believes* a fact to be true, which he must know to be false." *Archbold.* And *Starkie* observes, "It has been said, that a witness must not be examined in chief as to his *belief* or *persuasion*, but only as to his knowledge of the fact, since judgment must be given *secundum allegata et probata*; and a man cannot be indicted for perjury who falsely swears as to his persuasion or belief. As far as regards mere belief or persuasion, which does not rest upon a sufficient or legal foundation, this position is *correct*; as where a man believes a fact to be true, merely because he has *heard* it said to be so; but with respect to persuasion or belief, as founded on facts within the actual knowledge of the witness, the position is not true. On questions of identity of persons, and of handwriting, it is every-day's practice for witnesses to swear that they believe the person to be the same, or the handwriting to be that of a particular individual, although they will not swear positively; and the degree of credit to be attached to the evidence is a question for the jury. And with regard to the second objection, it has been decided that a man who falsely swears that he thinks or believes, may be indicted for perjury." *Starkie, 4th edition, page* 172.

(b) In this case, Mr. Ross, one of the judges of the nizamut adawlut, observed; "Had there been proof adduced to establish that the false depositions, for which the prisoners were tried, were given before the magistrate or other officer legally authorized to examine them, I should have recorded my opinion for convicting them of giving 'a false deposition in a court of justice', and for sentencing them to two years' imprisonment with labor. A false deposition before a court of justice, although upon a point not material to the issue of the case under examination, is a high misdemeanor, and punishable by the Mahomedan law." But Mr. Leycester, another of the judges, did not concur in this doctrine: "it is perjury or nothing; and if not perjury under our regulations, we cannot make another species of perjury, and punish it as a misdemeanor under the Mahomedan law. The regulation should be modified, and perjury defined as it now is in England."

had then been rejected, he was held guilty of perjury, and sentenced to imprisonment for 6 months; N. A. R. vol. 5, page 110.* But the assumption of a false name does not amount to perjury, where such assumption does not induce the court to attach greater credit to the evidence. Reports *L. P.* 1855, part 1, page 507. It is however sufficient if he hoped to add to the credibility of his statement.(a) Reports *L. P.* 1857, part 2, pages 284 and 451. Reports *W. P.* 1854, part 1, pages 246 and 295; and part 2, page 1. And the question is whether the evidence was material at the time it was given, for *e. g.* the admission of guilt by the defendant does not render the evidence of a witness immaterial to the issue of the case against that defendant so as to relieve the witness from the consequences of perjury. Reports *W. P.* 1855, part 2, page 680.

* *See other cases mentioned in para.* 4517.

4451. There must be a fraudulent or malicious intention. Thus, where the prisoners presented a petition to the magistrate for the recovery of a bullock unjustly detained by another person, and swore to their property in the bullock although in fact it belonged to a relation, to whom they restored it immediately on recovery, the absence of any fraudulent or malicious intention was considered sufficient to bar any punishment. N. A. R. vol. 1, page 222. But perjury is not extenuated by the circumstance of its being employed to benefit certain parties without detriment to any one. Thus, the nizamut adawlut refused to mitigate the minimum sentence of three years' imprisonment passed on certain persons, who swore falsely to the present existence of a woman, for the culpable homicide of whom other prisoners had been previously convicted, with a view to obtain the release of the latter. N. A. R. vol. 6, page 12. So, where a prisoner personated another, and swore falsely that he was present at an affray, and it appeared that his sole motive for so doing was to oblige the person whom he personated, he was convicted of perjury and sentenced to three months' imprisonment. N. A. R. vol. 2, page 204.

There must be a fraudulent or malicious intention.

But it is no excuse that the perjury will benefit certain parties without detriment to any one.

4452. Where the prisoner denied on oath the execution of a vakalutnamah, which he was proved to have executed, it was held that the offence did not come within the legal definition of perjury. But it does not appear in the report whether this was held, because the false statement was not injurious to any one, or because it was not made voluntarily. N. A. R. vol. 4, page 7.

Examples of cases, in which the false deposition did not amount to perjury.

4453. A private agent falsified his accounts to conceal the embezzlement of his employer's property, and swore to the truth of those accounts; it was held that he was not guilty of the legal crime of perjury. N. A. R. vol. 1, page 274.

(a) Where a person was charged with perjury in having falsely denied that she had made a certain statement before the darogah, she was acquitted because the fact of her having made such statement was not material to the issue of the case, however material the matter contained in the statement might have been. Reports *L. P.* 1854, part 1, page 404. But in a similar case the prisoner was convicted of perjury on the ground that the false denial was made with the intent of adding credit to the subsequent deposition, and in this way as affecting the credibility of the witness it was material to the issue of the case then pending before the magistrate. Reports *L. P.* 1854, part 2, page 48.

4454. Where the prisoners swore to a signature as that of an individual, who it appeared had written only one letter of his name, and had then given the pen to his brother to complete the signature, as he was not able himself to write well, the court held, in concurrence with the futwa, that it was merely a lax statement, without sufficient explanation, and not a deliberate falsehood. N. A. R. vol. 3, page 217.

The wilful concealment of bond debts by an insolvent debtor is perjury.

4455. The wilful concealment of bond debts due to an insolvent debtor examined on oath before the civil court under the rules contained in sect. 11, Reg. II. 1806, is punishable on conviction as wilful perjury under cl. 1, sect. 13, Reg. XVII. 1817. Const. No. 1086.

The oath must be administered in a place in which the administering officer is competent to hold his court.

4456. A deposition taken on oath in the private dwelling of a sudder ameen, distant nearly three miles from the court house, is illegal and cannot be received; consequently the deponent cannot be considered liable to the penalties of perjury if such deposition is false. Const. No. 627.

The oath must be taken before a competent court of jurisdiction:

4457. The oath or affirmation must be taken before a public officer authorized to administer the same. Thus, it was held that a prosecution for perjury could not legally be maintained against a person, who had sworn falsely in the investigation of a claim to a pension under Reg. XXIV. 1803, because there is no enactment which authorizes the collector to examine parties on oath in such cases. Const. No. 1106. So, where the collector is examining witnesses with reference to an application for a mutation of names in the register. Reports *W. P.* 1853, part 1, page 84. So, where the collector is attesting a mokhtarnamah. Reports *L. P.* 1854, part 1, page 228. So, where the oath was administered by a military court of enquiry, which has no power to examine upon oath. N. A. R. vol. 3, page 171. So, where the oath was administered by a police mohurir at the thana while the darogah was present at that place, because the mohurir under Reg. XX. 1817 has no power to administer oaths except in the absence of the daragah, and the latter has no authority to delegate his power of administering oaths when present. N. A. R. vol. 1, page 386. So, where the police darogah examined a witness upon oath, which is prohibited by cl. 1, sect. 13, Reg. XX. 1817. Reports *L. P.* 1851, page 1010.

and in a case in which the court can examine on oath.

4458. A party to a suit under Act IV. 1840 cannot be examined on oath; he cannot therefore be convicted of perjury for any false statement made on such examination. N. A. R. vol. 6, page 93. Reports *W. P.* 1853, part 2, page 1111.

Where sufficient if oath is administered by mohurir of civil court.

4459. So, the prosecution was disallowed, where the oath was administered by a mohurir of a civil court not duly authorized by the judge to take the examination of the witness. N. A. R. vol. 3, page 212. And it is not sufficient that the power to take the examination was delegated to such officer after the deposition had been committed to writing. N. A. R. vol. 1, page 326. The authority for exercising the power so delegated must be proved on the trial to make the proceedings complete. N. A. R. vol. 3, page 157. But a false deposition will amount to perjury, if the ministerial officer is duly authorized to take the deposition, for in such case the power to administer the oath is implied. N. A. R. vol. 2, page 202.

Oath must be in legal form.

4460. Perjury cannot be held against a Christian on evidence taken under the solemn declaration prescribed by Act. V. 1840, which has reference only to Hindus and Mahomedans. Reports *W. P.* 1855, part 1, page 449.

How far officers employed in the revenue department have the power of administering oaths.

4461. Wherever it has been the intention of the legislature, that officers employed in the revenue department shall have power to examine parties on oath, or solemn declaration, in cases pending before them either judicially or otherwise; and that the legal penalties for perjury should be applicable to such parties in the event of their giving deliberately and intentionally a false deposition on oath, or under a solemn declaration taken instead of an oath; and the penalties for subornation of perjury applicable to persons causing or procuring such persons to commit perjury; an express provision to that effect has been inserted in the regulations. Const. No. 1106. Thus it is so enacted, in the case of a putwaree examined before a collector, or the officer of a collector duly empowered to take his examination, relative to the lands, produce, collections, and charges, of the village or villages to which he belongs; and in the case of any native agent, employed by a proprietor or farmer of land in the management of his estate or farm, or in keeping the accounts relating to it, when so examined; and in the case of a proprietor or farmer of land, or his gomashtah or other officer, where no putwaree is appointed, when so examined: Reg. XII. 1817, sects. 26, 30, and 33: and Reg. I. 1801, sect. 8. So, in the case of witnesses examined by a collector or other officer exercising the powers of a collector, in resumption cases: Reg. II. 1819, sect. 19: or in settlement cases: Reg. VII. 1822, sect. 19, cl. 2. So, in regard to stamps, in the case of witnesses examined by the board or other controlling authority, or by the collectors of land revenue or other officers vested with the local charge of this branch of revenue: Reg. X. 1829, sect. 19. So, in the case of witnesses examined by the collector or other officer in charge of the abkaree mahal: Reg. XIII. 1816, sects. 86 and 88; and Reg. VII. 1824, sect. 16, cl. 4. So, in the case of witnesses examined by a salt agent or superintending officer of chokees: Reg. X. 1819, sects. 103 and 106; and Act XXIX. 1838, sect. 26. So, in the case of witnesses examined by a collector of the land revenue or customs, or by an agent for the provision of salt or opium, respecting the conduct of any native officer employed under them respectively: Reg. VIII. 1809, sect. 10, cl. 5. So, in the case of witnesses examined before arbitrators appointed to ascertain and determine the value of property required for public purposes: Act VI. 1857, sect. 19. So, in the case of persons who, in making any declaration under the authority of this Act (regarding the importation of rum and rum shrub), knowingly affirm an untruth: Act VI. 1841, sect. 9. Similar provisions have been made in other cases.

A deposition taken in the presence of the magistrate is not complete until attested.

4462. The majority of the nizamut adawlut held that a false deposition on oath taken by a native ministerial officer in the presence of the magistrate (in the manner prescribed in C. O. No. 58 of vol. 1*) relative to some judicial proceeding, and upon a point material to the issue thereof, is perjury. Const. No. 656. It must be proved that the oath was administered before the deposition was given. Reports *W. P.* 1853, part 2, page 149?; and 1855, part 1, page 770. But if the false statement is retracted by the witness before the

* *v. para.* 511.

deposition has been attested by the magistrate, it does not amount to perjury. N. A. R. vol. 2, page 154; vol. 5, page 70; vol. 6, page 282.

The examination on oath must be necessary.

4463. The prisoner preferred a charge of theft before the darogah, but could not prove it, and the magistrate sent for him and examined him on oath, when he said that he had no charge to prefer against any person. Held that, as he made no complaint, his examination on oath was unnecessary, and perjury could not be assigned on statements contained therein. Reports *L. P.* 1855, part 2, page 564. So, it was held in the case of Baboolah Khan by a majority of three judges out of five, that, if the magistrate sends for a person who has laid a complaint before the darogah, which complaint has not been proved, and such person declines to repeat the complaint, he cannot be required to give a deposition on oath, in which he must be compelled to adhere to a statement to which he is unwilling to adhere, or to subject himself by abandoning his first statement to be charged with perjury. If however he willingly repeats the charge on oath, the enquiry becomes judicial, and he would be liable for perjury committed therein.(a) Reports *L. P.* 1856, part 2, page 993.

Punishment has been remitted when the oath ought not to have been administered;

4464. Punishment has been remitted where the oath ought not to have been administered. Thus, where a person was examined on oath with respect to criminal acts, in which he was implicated as a party, and when therefore he was reduced to the alternative of giving false evidence or of criminating himself, he was discharged without punishment. N. A. R. vol. 1, pages 138 and 349. And on discovery that a witness has deposed falsely he must not be invited to contradict upon oath his former statement, and then be committed for perjury on the two contradictory statements. But he may be committed for the false statement in the first deposition, if other proof can be adduced to its falsehood. N. A. R. vol. 2, page 180; and vol. 6, page 91. Reports *L. P.* 1855, part 1, pages 195, 207, and 228. So, where a person wished to withdraw a charge which he had made on oath at the thana, and the darogah, before whom the first deposition had been made, recorded the retractation also upon oath, it was held that the commitment for perjury on the two contradictory statements could not be sustained because the darogah had no power to administer the second oath. Reports *L. P.* 1854, part 1, page 446. So, where it appeared that one person had instigated another to personate his brother, and they were examined as to the identity on oath, and were afterwards committed and convicted of perjury and subornation of perjury on their depositions then taken, the court held that it was irregular to take their evidence on oath instead of at once putting them on their defence; and the conviction of perjury was set aside. Reports *L. P.* 1851, page 973. But, where the prisoner came forward of his own accord and acknowledged that he had misstated facts in his previous deposition, and represented in a petition what had really taken place, and his evidence was then again taken on solemn affirmation, it was held that such course was regular,

(a) The report of this case contains elaborate arguments in regard to the power of a magistrate to initiate criminal charges, and the conditions necessary to constitute perjury.

and he was convicted of perjury on the contradiction in the two statements. Reports *L. P.* 1852, part 2, page 748. So, where the deponent comes forward a second time voluntarily, and the officer taking the second deposition is not aware that it will contradict the first. Reports *L. P.* 1853, part 1, page 7; and 1856, part 2, page 357. But such voluntary correction of a misstatement may be accepted as a cause for mitigating punishment. Reports *W. P.* 1854, part 1, page 13. Where the magistrate in the investigation of a charge of assault caused some of the bystanders to be mixed with the defendants, and then desired the witnesses for the plaintiff to point out the persons concerned in the assault, and they accordingly pointed out several persons wholly unconcerned in the case, and were on that committed for perjury; the nizamut adawlut would not give their sanction to the artifice by which the witnesses were entrapped into the offence, and directed their discharge without punishment. N. A. R. vol. 2, page 321. Reports *L. P.* 1857, part 1, page 595; and *W. P.* 1854, part 1, pages 148 and 540. So, where the prisoners brought a charge of murder before the police, and the magistrate, having satisfied himself from the surgeon's report and other evidence that murder had not been committed, sent for the prisoners and put them on their oath, and they deposed to the same effect, it was held that the conviction of perjury could not stand, because the prisoners had been led unwarily to commit themselves. Reports *L. P.* 1855, part 2, page 180.

and where the offender was entrapped into the commission of the offence;

4465. Similarly all punishment was remitted, when the perjury was established by two contradictory statements, and it appeared that the second statement was the result of fear in consequence of the detention of the prisoner in hajut. Reports *L. P.* 1855, part 2, page 810. So, where the prisoner was induced to make the first statement by threats held out by the police. Reports *L. P.* 1854, part 2, page 288. The same ruling has been applied to perjuries committed under the influence of intimidation and fear of parties interested; Reports *L. P.* 1854, part 2, page 83; 1855, part 1, page 400; but it seems questionable whether fear can be admitted as any ground for a legal acquittal in such cases, however just a plea it may afford for mitigation of punishment or pardon.

and where there was a presumption of intimidation.

4466. If witnesses were examined in the courts of the magistrates, as they should be, by the magistrates themselves, and closely questioned as to every apparent inconsistency in their depositions, care being taken at the same time to make them understand the questions asked, and to write down the answers given by them so as to convey exactly their intended meaning, the crime would not be so often committed with impunity as it is. To warrant a sentence of punishment, it is only required, under cl. 1, sect. 3, Reg. II. 1807, that the proof adduced be sufficient to satisfy the judge that the crime, defined to be perjury, has really been wilfully committed by the accused prisoner.(a) Const. No. 638.

Precautions to be adopted in taking evidence to ensure conviction of perjury.

Nature of proof required.

(a) Under the Mahomedan law, perjury may be proved either by confession, or by circumstantial evidence such as affords, in the opinion of the judge, direct or strongly presumptive proof: thus, two contradictory statements of a fact are a direct proof of perjury, where the first is affirmatory and the second a negative; as where a person deposes that he saw A kill B, and afterwards deposes that he did not witness the transaction: but if he first deposes that he did not see the occurrence, and afterwards states in evidence that he was an eye-witness to it, the infirmity of the memory is admitted as an excuse to bar the punishment. It seems also that a person, who confesses that he deposed falsely in the first instance from fear, is not liable to punishment if he afterwards tells

Proof of oath.

Magisterial officers are required to insert in the heading of each deposition the name of the person, who administers the solemn affirmation used instead of an oath. C. O. No. 37, February 27, 1857. *L. P.*

Commitment

If in civil court, to be made by judge.

4467. If a witness, or any person, is guilty of wilful and corrupt perjury in any cause or matter in a civil court, the judge is immediately to commit the offender to take his trial before the sessions court. *Beng.* Reg. IV. 1793, sect. 14. *Ced. Prov.* Reg. III. 1803, sect. 8.

Magistrate not to entertain charge of perjury against persons engaged in a civil suit.

4468. Magistrates are not to receive any charges of perjury, which are preferred by parties in civil suits, either against their own witnesses, or against the witnesses of the adverse party, or of subornation of perjury against the adverse parties in such suits; and all individuals whose attendance is required in the civil courts, either as plaintiffs, defendants, or witnesses, are hereby declared not to be liable to any prosecutions of this description, unless they are committed to take their trial by the civil judge under the authority vested in him by the above provision.(a) *Beng. and Ben.* Reg. III. 1801, sect. 2. *Ced. Prov.* Reg. VII. 1813, sect. 3. Reg. XVII. 1817, sect. 14, cl. 1.

This rule is applicable to all allegations of perjury against parties or witnesses in any civil suit or any civil proceeding before a judge or a subordinate civil court.

Mode of procedure in such cases.

4469. The above rule (with this qualification that the civil judge may commit to prison, or admit to bail, as he thinks proper, under the discretion given by sect. 5, Reg. II. 1807) is to be considered applicable to all allegations of perjury, or subornation of perjury, against parties or witnesses in any civil suits, or any civil proceedings whatever, before the judge of a civil court, or before a sudder ameen or moonsiff, or an arbitrator or arbitrators appointed to investigate such suits, or an officer employed by a civil court in any local or other enquiry, or in the execution of any civil process. In all such cases the proceedings, on which the charge of perjury, or subornation of perjury, is grounded, if not held before the civil judge in the first instance, are to be referred to him by the

the truth. Where the difference between the two statements is not very material, the witness is not liable to punishment: but it is sufficient if his statement appears to the judge manifestly impossible. See the futwa given by the law officers of the nizamut adawlut, quoted in Const. No. 656; it contains several other particulars and conditions regarding the liability of witnesses to a sentence of tazeer for perjury, and the circumstances which absolve them from punishment, but it seems unnecessary to recount them here.

(a) The reasons of this enactment are thus stated in the preamble to Reg. III. 1801:—"But a practice has become very prevalent in different parts of the Company's provinces, for the parties in civil suits to prefer unfounded charges of perjury against the witnesses of their opponents, and against their own witnesses where their evidence does not establish every point which they may have been brought to prove, and similar charges of subornation of perjury against the adverse parties in such suits. These accusations are frequently supported by gross perjury on the part of the witnesses produced in support of them; and, unless checked, they will deter all men of respectability from appearing to give their testimony on oath in any court of justice, except on compulsion, and will greatly increase the difficulties, which already exist, in obtaining the voluntary attendance of witnesses of this description, while exposed as at present to the disgrace of a commitment to jail, and of a public trial on a criminal charge. The only effectual remedy, which can be applied to this abuse, is to take away altogether from parties in civil suits the right of bringing forward such accusations, and to leave it in the discretion of the judge to determine when any witnesses brought before him are guilty of perjury, which he may always be able to do by cross-questioning them minutely, and by confronting them, when necessary, with the witnesses of the adverse party."

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moonsiff or other officer, before whom the proceedings have been held, with the sentiments of such officer upon the case; and, if the judge is of opinion that there are sufficient grounds for bringing the accused party to trial before the sessions court on a charge of perjury, or subornation of perjury, he is to record his opinion to that effect; and at the same time to direct whether the accused is to be admitted to bail or kept in custody. An authenticated copy of the order passed by him, with the whole of the original papers relative to the case, are then to be transferred to the cutcherry of the magistrate, that the order of the judge may be carried into effect, and the case brought to the sessions court, in the same manner as if the charge had been instituted and proceeded upon in the court of the magistrate. Reg. XVII. 1817, sect. 14, cl. 2.

Principal sudder ameens may commit to the sessions for perjuries in cases before themselves.

4470. The powers vested by cl. 2, sect. 14, Reg. XVII. 1817 in zillah and city judges of committing persons chargeable with perjury or subornation of perjury in cases pending before such judges, are vested in principal sudder ameens in civil cases pending before them: and the principal sudder ameens and the magistrates are authorized and required to proceed in the manner in which the said judges and magistrates are authorized and required to proceed by the said clause. Act I. 1848, sect. 3.

This includes miscellaneous cases.

4471. The words "any civil proceedings whatever" in the above provision include miscellaneous cases. Const. No. 838.

It does not refer to giving money to influence evidence.

4472. A civil judge is not authorized, under the above provision, to commit a person for trial on the charge of giving money to witnesses in a civil suit for the purpose of influencing their evidence. Const. No. 504.

Subordinate courts must refer through the judge.

4473. The moonsiff is not competent to make over to the magistrate persons charged with perjury; he must refer the proceedings to the judge. Where he sent the case direct to the magistrate without reference to the judge, the proceedings were annulled. Reports *W. P.* 1855, part 1, page 242.

The commitment must be made at the instance of the court in which the perjury was committed.

4474. A prisoner in a criminal case referred by the magistrate to the moulvie for investigation, admitted that he had perjured himself on a previous occasion in the civil court; he was then sent back to the magistrate, who committed him to the sessions for the perjury; held that the proceeding was irregular, and that the commitment should have been made at the instance of the court in which the perjury was committed. The proceedings of the court of circuit were annulled, and the prisoner was held to bail to answer the charge of perjury, if again preferred against him in consequence of any report which the register (the officer in whose court the perjury was alleged to have been committed) might make to the judge in conformity with the above provisions. N. A. R. vol. 2, page 208.

The judge cannot direct the principal sudder ameen to commit.

4475. Where the judge, when hearing an appeal from the decree of the principal sudder ameen in a civil suit, reversed the decision, and further ordered that officer to enquire regarding the supposed perjury of certain witnesses in the original proceedings, and to commit them for trial, if he should consider the perjury proved; the court held that the direction was irregular and the commitment vitiated. The witnesses might have been

committed either by the principal sudder ameen or by the judge while the case was pending before himself; but the judge could not direct the principal sudder ameen to commit; nor could the latter act when the case was no longer pending before him. Reports *W. P.* 1852, page 40.

No appeal lies from the order of a civil court refusing to commit for perjury.

4476. No appeal lies from the order of an inferior civil court, under cl. 2, sect. 14, Reg. XVII. 1817, declining to entertain a charge of perjury, or to proceed against parties accused of such offence. Reports *W. P.* 1855, part 1, page 86. Or from the order of the judge. Carrau's Reports of Summary cases, page 109, September 15, 1846.

Civil courts cannot entertain such charges after the disposal of the suit.

4477. The civil courts cannot entertain charges of perjury in cases which are no longer pending; and no authority is given to them to institute a miscellaneous case for the purpose of enquiring into the alleged perjury. Reports *W. P.* 1855, part 1, page 770. Where the plaintiff in a civil suit before a moonsiff produced a person to personate the defendant and to file a confession of judgment, and the moonsiff put them on their oath and received the pleading without passing any final order, and the parties were subsequently committed for perjury, it was held that the moonsiff acted regularly as the case was still pending, and that the mere receipt and filing of the confession of judgment did not so dispose of the suit as to require the court to revive it by a review of judgment. Reports *W. P.* 1853, part 2, page 1392.

Duty of the magistrate in such cases.

4478. In cases of perjury in the civil courts (whether before the judge or a subordinate court) the commitment should, according to cl. 2, sect. 14, Reg. XVII. 1817, be made by the judge; who is at the same time to determine whether the persons charged are to be admitted to bail or kept in custody; the duty of the magistrate being confined to causing the attendance of the parties and witnesses before the court by whom the case is to be tried. C. O. No. 169 of vol. 2.

The duty of the magistrate is merely ministerial. He cannot exercise his discretion.

4479. When the civil court makes over a case to the magistrate, the latter cannot investigate the charge, nor can he exercise any discretion or express any opinion as to the guilt or innocence of the accused. His duty is simply ministerial. Reports *W. P.* 1853, part 1, page 106; and 1855, part 1, page 242. And the judge cannot direct the magistrate to state his opinion whether perjury is proved, and base his own order of commitment on that opinion. Reports *W. P.* 1853, part 1, page 198.

The magistrate investigating a case of forgery referred by civil court cannot originate charge of perjury;

4480. When a prisoner is made over to the magistrate by a civil court under Act I. 1848 on a charge of forgery, he cannot be committed by the magistrate on a charge of perjury also. In the case of perjury before the civil court the officer presiding alone has the power of originating the charge. Reports *L. P.* 1854, part 2, page 540; and *W. P.* 1853, part 2, page 1423. (*a*)

(*a*) The *Western Court* has held that when a subordinate civil court refers to the judge a charge of perjury as regards certain persons, the latter is not authorized to commit to the sessions any other persons whose complicity in the offence he may consider proved. It was also ruled that when the judge committed to the sessions the person against whom the moonsiff alleged perjury, he could not direct the magistrate to enquire into additional

4481. When a case of forgery has been referred to the magistrate by a civil court, he is required to commit the parties against whom he considers it to be proved to take their trial before the sessions court; but it is not within his province to intimate to the civil court that he thinks that there is proof sufficient for committing certain persons to the sessions court for perjury. The commitment in cases of perjury in a civil court must be made either by the judge under cl. 2. sect. 14, Reg. XVII. 1817, or by the principal sudder ameen under sect. 3, Act I. 1848, not at the instance of the magistrate, but in the simple exercise of their own discretion and upon their own undivided responsibility. Reports *W. P.* 1852, page 1349; and 1853, part 1, page 69.

nor recommend the civil court to take up such a charge.

4482. In a case of forgery and perjury, alleged to have been committed before a collector in a summary suit, where the magistrate committed the prisoners, and the circuit judge convicted them, on the complaint of the losing party, the whole of the proceedings were declared null and void, and the prisoners were released. N. A. R. vol. 3, page 203.

Examples or irregular procedure.

4483. In a case of perjury, where the commitment was made by the magistrate in the same irregular manner, the proceedings having been made over to him by the civil judge who ought himself to have committed the case, the proceedings were annulled; but as the prisoners had already been in confinement for eighteen months, and under all the circumstances of the case, the court did not consider it necessary that further proceedings should be held against them, and directed that they should be immediately released. N. A. R. vol. 3, page 290.

4484. The provisions of sect. 4, Reg. III. 1804 (*Beng.* sect. 4, Reg. XI. 1796)* are capable of enforcement by the civil judge against any party who absconds being at the time under a charge of perjury in the civil court. It is the duty of the civil judge in such cases to call upon the magistrate of the district to perform the acts described in that section, and in the corresponding section of Reg. XX. 1817, with a view to the apprehension of the absconding party; and it is incumbent on the magistrate to obey such requisitions, and to proceed as he would do, were the absconding party in question charged with a criminal offence primarily cognizable in his court. The principle set forth in the third paragraph of Const. No. 648 [viz. that the plea that the collector's office does not furnish sufficient information, or that no division can be made of the attached talooks, is not sufficient to warrant the collector in declining to bring the same to sale, because he is bound to obtain the required information and to make the requisite division or to satisfy the court that it cannot

How the civil judge is to proceed if the person charged with perjury absconds.

* *v. paras.* 1737 *et seq.*

Rule regarding the attachment of property in such cases.

charges against the same individual for forgery, conspiracy, and fraud. Reports *W. P.* 1853, part 1, page 198; and 1855, part 2, page 348. But a doubt may be entertained of the correctness of both of these rulings. The first is not warranted by the words of sect. 2, Reg. III. 1801, or of cl. 2, sect. 14, Reg. XVII. 1817; and the last is directly opposed to Act I. 1848, as regards the forgery, though correct in so far that the magistrate could not entertain the charges of conspiracy and fraud unless preferred by a complainant on oath, for in such cases the requisition of the civil court does not supersede the necessity of a formal complaint.

be done] is applicable to attachments of property directed to be made under the sanction of the law above cited and these instructions (a). C. O. No. 6 of vol. 4.

Rule for the admitting to bail persons charged with perjury, or subornation of perjury.

4485. Persons charged with the crime of perjury, or subornation of perjury, as defined in the preceding section, and appearing to the civil or criminal courts, by whom they are ordered to be brought to trial before the sessions courts, to have been guilty of the charge, are not to be admitted to bail (notwithstanding anything declared to the contrary in any existing regulation) unless specially authorized by the court under whose directions they are committed for trial. But nothing herein contained is to be construed to preclude the magistrate from admitting to bail persons committed by him for trial, on charges preferred originally before him, in cases cognizable by him under the regulations, without any order from a civil or criminal court for the commitment of such persons for trial before the sessions court. Reg. II. 1807, sect. 5.

In cases committed by the civil judge, he is to draw up and sign the charge.
* *v. para.* 1020.

4486. The separate paper, containing the charges in the English and vernacular, prescribed by para. 16 of C. O. No. 54 of vol. 2,* is to be drawn up and signed by the judge, who makes a commitment for perjury brought to light in the course of any civil proceeding. C. O. No. 4 of vol. 4.

Session judge may try persons committed by himself as civil judge.

4487. It is competent to the session judges to try persons committed by themselves as civil judges under the provisions of cl. 2, sect. 14, Reg. XVII. 1817 for perjury or subornation of perjury, any law to the contrary notwithstanding. Act I. 1848, sect. 4.

Perjury before a register of deeds.

4488. The registry of deeds is a "civil proceeding," contemplated by cl. 2, sect. 14, Reg. XVII. 1817, and, in cases of perjury before the register of deeds, the judge and register should proceed in conformity thereto. Const. No. 611.

Procedure in cases of perjury before collector acting judicially.

4489. In so far as concerns the summoning and examination of witnesses, the penalties for false testimony, for resistance of process, contempts, and all other similar matters connected with cases under cognizance before the collectors of land revenue, or other officer by virtue of the powers vested in them by this regulation, or any other regulation whereby collectors are vested with judicial powers, their cutcherry or office for the time being is to be deemed and held to be a court of civil judicature. Reg. VII. 1822, sect. 23, cl. 1.

4490. With reference to this rule, and to the regulations quoted in *paras.* 4468 and 4469, the Western court held that the only authorities competent to commit a putwaree for trial on a charge of perjury, were the deputy collector and commissioner before whom (acting judicially) the cause or matter in which the alleged perjury was committed was pending: and, as they did not think proper to do so, but on the contrary accepted as true the alleged false evidence (and their decisions were still in force), therefore no other authority was competent to institute proceedings against the putwaree on a charge of perjury, in refer-

(a) The original refers to forgery, but the rules then in force with regard to forgery were the same as those now applicable to cases of perjury.

ence to that case, in the magistrate's court or elsewhere.(a) Reports *W. P.* 1856, part 1, page 472.

Sudder dewanny adawlut how to proceed, if there appear sufficient grounds to bring any person to trial on such charge.

4491. If the judges of the court of sudder dewanny adawlut, or any single judge of that court in cases within the competency of a single judge, are of opinion that there are sufficient grounds, on any civil proceeding before them, for bringing a party or witness to trial on a charge of perjury or subornation of perjury, they are to record their sentiments to that effect; and at the same time to direct whether the party accused shall be admitted to bail, or kept in custody:—an authenticated copy of the order so passed, with the whole of the original papers relative to the case, are then to be transmitted to the proper magistrate, for the purpose of being proceeded upon as stated in the preceding clause [*para.* 4469]. Reg. XVII. 1817, sect. 14, cl. 3.

Session judge how to proceed if any witness or party attending the court is guilty of such offence.

4492. Whenever a witness giving evidence before a sessions court is considered by the judge of that court to be guilty of wilful perjury, or whenever a person attending a sessions court is considered by the judge of that court to be guilty of subornation of perjury, in any trial or matter depending before the court, and the whole of the witnesses required for the proof of the charge and for the defence of the accused are also in attendance, it is competent to the session judge to direct the magistrate to commit the person so charged for immediate trial before the sessions court. Provided that nothing in this section is to be construed to authorize the conviction or punishment of any person, charged with the crimes specified, until he has been regularly put upon his trial; or until any material evidence which he has to offer in his defence has been received and duly considered. Reg. II. 1807, sect. 6.

Judge must exercise great caution.

4493. The session judge cannot leave the commitment of parties for perjury to the discretion of the magistrate. Reports *W. P.* 1853, part 2, page 1158. But session judges should exercise great caution in directing the committal for perjury of parties who have contradicted before the sessions court the evidence given by them before the magistrate, especially when the contradiction benefits the party accused. By an indiscriminate or injudicious use of the power vested in the session judge, witnesses would be forced to adhere to any perjury, which they may have committed before the magistrate: whereas, by abstaining from the punishment of those witnesses who may appear to correct at the sessions the falsehood of their first evidence, and limiting the order of committal to those who manifestly make a false deposition before the sessions, the ends of justice would be more satisfactorily attained. C. O. No. 34 of vol. 4. *W. P.*

Magistrate is not to receive or act upon any charge of such offence alleged to have been committed in any criminal court, unless the officer presiding in such court

4494. The restrictions against prosecutions for perjury and subornation of perjury of witnesses and parties in the civil courts, unless the officers presiding in those courts are of opinion that there are grounds for such prosecutions, are extended to all charges of perjury, or subornation of perjury, against witnesses and prosecutors in the criminal courts, or

(a) It would seem from this that a collector acting judicially must refer the case to the civil judge. For proceedings in any other capacity, see *para.* 4497.

considers that there are grounds for the prosecution.

before any public officer authorized to hold inquiries respecting offences of a criminal nature. Provision is already made in sect. 6, Reg. II. 1807 or such cases, when persons attending the sessions court appear to the judge of that court to be guilty of perjury or subornation of perjury. The session judges, and the judges of the nizamut adawlut, or a single judge of that court in cases within the competency of a single judge, are empowered to direct the proper magistrate to commit to custody, or hold to bail, and to bring to trial at the sessions, any person who, from proceedings before the above courts, appears to have been guilty of the crime of perjury, or subornation of perjury; and the magistrates themselves are vested by the regulations with full authority to commit, or hold to bail, for trial before the sessions court all persons who, on their own proceedings, or those of their assistants, are considered guilty of either of the crimes above mentioned. The magistrates are therefore prohibited from receiving and acting upon any charges of perjury or subornation of perjury, alleged to have been committed in the course of any trial, or enquiry of a criminal nature, excepting such as come before them in the manner provided for by this section. Reg. XVII. 1817, sect. 14, cl. 4.

Session judge may try a case which he has directed the magistrate to commit.

4495. In perjuries before a session judge, he is at liberty, under the above provisions to direct the magistrate to commit the offenders for trial, and immediately to proceed to the trial of the case himself. C. O. No. 169 of vol. 2.

Perjury before a law officer in a case referred for report.

4496. When the prisoner was committed by the magistrate for perjury before the law officer in a case referred to the latter for investigation and report, it was held that the commitment was good, because it was made by the officer before whom the case came for consideration in the first instance. Reports *L. P.* 1854, part 2, page 28.

Procedure in cases before a collector or other public officer, not sitting judicially.

4497. The magistrates are further restricted from receiving and acting upon charges of perjury, or subornation of perjury, alleged to have been committed before a collector or other public officer, unless such officer transmits the proceedings held before him with his opinion, that there are grounds for believing such charge to be well founded. In that case, and if the magistrate on inspection of the proceedings, or after making such further enquiry as he deems necessary, is of opinion that there are grounds for bringing the party accused to trial before the sessions court, he is to pass an order to that effect; and is at the same time to direct whether the accused shall be held to bail or kept in custody till the sessions. Reg. XVII. 1817, sect. 14, cl. 5. This provision refers to a collector in his financial capacity. If acting judicially, the mode of procedure is different, for which see para. 4490. Reports *W. P.* 1856, part 1, page 472.

Trial.

If there is no private prosecutor, the magistrate is to appoint a person to prosecute.

4498. In all the cases provided for by this section, if there is no private prosecutor to whom the magistrate judges it proper to leave the prosecution of the case before the sessions court, he is to appoint the vakeel of government, or some other qualified person, to conduct the prosecution before the sessions court, and is to furnish him with the requisite information and instructions for that purpose. Reg. XVII. 1817, sect. 14, cl. 6.

Forms of indictment.

4499. The following forms of indictments are to be used in cases of perjury, mutatis mutandis:—"Perjury, in having, on the 1st May 1847, deposed under a solemn declaration, taken instead of an oath, before the magistrate of zillah Moorshedabad, that [*here enter the false statement in which the perjury consists*], such deposition being false, and having been intentionally and deliberately made on a point material to the issue of the case."—In cases of statements directly at variance with each other, the following form is to be used:—"Perjury, in having on the 1st January 1847, intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the civil judge of zillah Moorshedabad, that [*here enter the first statement*]; and in having on the 13th February 1847 again intentionally and deliberately deposed, under a solemn declaration taken instead of an oath, before the said civil judge of zillah Moorshedabad [*or any other court*], that [*here insert the second statement*]; such statements being contradictory of each other on a point material to the issue of the case." C. O. No. 10 of vol. 4.

Error as to date.

4500. An error as to the date of the perjury in the charge was held necessarily fatal to the commitment. But the case would have been sent back for retrial, if there had appeared to the court sufficient evidence to support the charge. Reports *W. P.* 1852, page 194.

Exact words must be quoted.

4501. The exact words used by the deponent must be quoted in the charge; and the perjury must be proved on them, and not on any arbitrary construction as to the meaning of the language used. Reports *W. P.* 1853, part 1, page 198.

The part of the deposition on which the perjury is assigned, must be pointed out.

4502. Where the magistrate in drawing up the charge inserted the whole of the deposition made by the prisoner, instead of pointing out the particular portion on which the perjury was assigned, the prisoner was acquitted. Reports *L. P.* 1854, part 1, page 380.

Confession alone is not sufficient; proof required of the falsity of the matter sworn.

4503. It is not regular to convict of perjury on mere confession of having been instigated to swear falsely, when the truth or falsehood of the facts sworn to be doubtful: but the confession of the prisoner that he swore falsely is sufficient evidence for conviction of perjury, provided circumstances indicate the falsehood of the deposition charged to be false. N. A. R. vol. 1, page 314; and vol. 2, page 168.

Original deposition must be filed.

4504. The original depositions on which the charge of perjury is laid, must be filed in the case. Reports *L. P.* 1851, page 381.

Proof required of the taking of the oath; of the authority to administer the oath; and of the occasion. The time, place, and court, must be noted in the charge.

4505. The recital in the roobakaree of commitment that the false deposition was taken on oath, is not a sufficient proof of the fact: but where it was certified by the magistrate that the false statement was made on oath, and the prisoner did not dispute that he was sworn, the nizamut adawlut did not deem the omission to bring witnesses to that fact to be material. Where, in a case of alleged false personation by a witness before an uncovenanted deputy collector under Reg. VII. 1799, the time, place, and court, in which the evidence was given, were not stated in the charge; and the deposition taken before the deputy collector was not placed on the record of the trial; and the authority under which the deputy collector took the deposition was not recorded: the trial was quashed, and the proceedings were returned that these omissions might be supplied, and the trial

held *de novo* in a regular manner. N. A. R. vol. 2, page 64; vol. 3, page 22; and vol. 5, page 166.

Case of fatal variance in description of the witness.

4506. Where the prisoner denied on oath that he had previously given evidence, and was accordingly committed for perjury; and it appeared that in the original deposition the witness was described as about thirty years of age, and that the prisoner appeared on trial to be upwards of fifty; the nizamut adawlut held that this discrepancy was sufficient ground for doubting his identity, and accordingly acquitted him. N. A. R. vol. 3, page 347.

Irregularities in recording depositions fatal to commitment.

4507. The prisoner, committed for perjury on two contradictory statements, was acquitted, because one deposition of the accused had not been signed by himself, and the other was not signed and duly certified by the magistrate before whom it was taken. There was nothing therefore to show that the latter had been recorded before an officer empowered to administer an oath. Reports *L. P.* 1854, part 1, pages 217 and 328. So, where the deposition was not attested on the date when it was written down, the witness having absented himself in the interval. Reports *L. P.* 1855, part 2, page 349. So, where the perjury was assigned on a deposition made before the police, and the fact of its being made on oath was not recorded thereon, although it was proved that the oath had been administered. Reports *W. P.* 1854, part 1, page 321. So, where the writers of the depositions had deceased, and the deputy magistrate before whom one was taken had left the country, and there was no evidence as to the mode in which the depositions were given by the prisoner, that is to say whether they were deliberately and intentionally made. Reports *L. P.* 1856, part 2, page 940.

Oath against oath is not sufficient evidence of perjury.

4508. When the perjury charged consisted in the prisoner having on oath stated that two persons were present at and attested the execution of a certain deed of gift, and those two persons denied that they were present and attested the deed, he was acquitted on the ground that such conflict of testimony was not sufficient proof of the prisoner's falsehood without evidence to establish the truth of the counter-statement. Reports *L. P.* 1855, part 2, page 354.

Whether proceedings can be taken for perjury, after the final disposal of the case in which the perjury occurred.

4509. It has been held that the case in which the perjury charged was committed must be pending at the time of the commitment of the prisoner. Perjury, it was said, must be material to the issue of a case pending, otherwise no issue is left for disposal: when once final orders have been passed in a case between the parties to it, the proceedings cannot be referred to for the purpose of enquiring into a charge of perjury said to have been committed while it was pending. Reports *L. P.* 1854, part 2, page 680; 1855, part 1, page 766; and *W. P.* 1854, part 2, page 169. But it seems that this ruling is incorrect; and is opposed to principle and precedent. The case in which the evidence is given must be pending when the evidence is taken, because otherwise the court could not administer the oath; but the disposal of the case cannot affect the guilt of the criminal or the power of the criminal court to deal with the perjury; and no express law interdicts the practice.

Whether false evidence given during a preliminary investigation is perjury.

4510. It has also been held that when only the preliminary investigation under cl. 6, sect. 2, Reg. III. 1812 is being made, and when therefore the accused has not been put on

trial, witnesses who depose falsely cannot be punished for perjury, as the case has not assumed the character of a judicial proceeding against the accused. Reports *L. P.* 1854, part 1, pages 170 and 185; part 2, page 568. In such cases, it is said, the complainant and the witnesses may be punished for false complaint or conspiracy; and this is doubtless correct; but that would not bar the punishment for perjury. The doctrine appears to be erroneous, and was disallowed by the majority of judges in the case of Musst. Boodhia in Reports *L. P.* 1855, part 2, page 404.

Charge of perjury in false complaint on oath may be entertained notwithstanding the provisions for false complaints.

4511. A false deposition on oath, or under a solemn declaration taken instead of an oath, containing a deliberate and specific criminal charge, which the deponent knows to be unfounded, and which also appears to be malicious, is within the provisions for perjury, notwithstanding the rules for the punishment of malicious, vexatious, and unfounded complaints in sect. 5, Reg. VII. 1811. Const. No. 233.

Penalties.

What sentence may be awarded in cases of perjury, and subornation of perjury.

4512. If any person amenable to the jurisdiction of a sessions court is convicted before that court, whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, of wilful perjury, or subornation of perjury, as defined in Reg. II. 1807, or Reg. XVII. 1817; and is, in consequence, by the futwa of the Mahomedan law officer of the sessions court, declared liable to discretionary punishment (tazeer, acoobut, or seasut); the session judge, provided he concurs with the law officer in the conviction of the prisoner, is to sentence him to receive thirty stripes [now commutable to two years' additional imprisonment], and to be imprisoned in banishment from the district for the period of seven years, unless the judge, on consideration of all the circumstances of the case, is of opinion that any part of the prescribed punishment is too severe; in which case he is authorized to mitigate the sentence to imprisonment for any period not less than three years. Reg. II. 1807, sect. 3, cl. 1. Reg. XVII. 1817, sect. 9, cls. 1 and 2.

Session judge may refer the trial for mitigation of such sentence.

4513. If in any instance the session judge is of opinion, that a further mitigation or remission of punishment is necessary, he is, provided he concurs in the conviction of the prisoner, to pass sentence according to the preceding clause, and to refer the trial, with his sentiments at large, for the final sentence or order of the nizamut adawlut. Reg. XVII. 1817, sect. 9, cl. 3.

Trial to be referred if session judge differs from his law officer.

4514. If the session judge differs in opinion from the law officer of his court, with respect to the conviction of the prisoner, he is not to pass any sentence, but is to transmit his own and the magistrate's proceedings, with his sentiments in a letter to accompany them, for the sentence of the nizamut adawlut. Reg. II. 1807, sect. 3, cl. 2.

Sentence to be passed by the nizamut adawlut.

*But see para. 1480.

4515. In cases of reference to the nizamut adawlut, this court, after taking the futwa of its law officers,* is, if the prisoner be convicted, to sentence him to any punishment deemed proper, not exceeding that specified above. Reg. II. 1807, sect. 3, cl. 3.

Precedents.

Cases of false accusations made on oath.

4516. A prisoner convicted of perjury in falsely swearing to a charge of murder against several persons, having also previously given a different account of the transaction

on oath, was sentenced to tusheer and to imprisonment in banishment for 7 years. N. A. R. vol. 3, page 50. A woman caught in the act of adultery by two persons, accused them falsely of theft, and was sentenced to one year's imprisonment from the date on which her trial was completed by the sessions court. N. A. R. vol. 3, page 22. Where the prisoner was brought to the magistrate's court with a hand and a foot cut off, and falsely accused certain parties of having perpetrated the mutilation and of having murdered his brother, but it appeared that he was actuated by a desire to secure attention and care in his wounded state and a provision for himself in his helpless condition, and he confessed the crime, he was sentenced to 6 months' imprisonment, in addition to the 6 months' confinement which he had already undergone. N. A. R. vol. 2, page 168. Where the prisoners deposed to a false charge of robbery, but on the trial of the person whom they had accused voluntarily retracted their assertions, and there was strong suspicion that undue influence had been exerted to make them depose falsely, the nizamut adawlut, in consideration of the confinement which they had already suffered, ordered their release.(*a*) N. A. R. vol. 1, page 288.

Cases of perjury in order to defeat the ends of justice.

4517. Where the prisoner denied in the sessions court all knowledge of a confession which he had attested before the magistrate, he was sentenced to imprisonment for 5 years with labor in irons. N. A. R. vol. 5, page 102. So, where the prisoner having witnessed a confession of burglars at the thana, denied on oath before the magistrate that he had done so; but afterwards before the same magistrate admitted that his denial was false, alleging in extenuation and excuse that he had made a misstatement through confusion and perplexity of mind and not deliberately; the court convicted him of perjury on his confession of false swearing, although the law officers of both courts considered that the excuse advanced in the confession was sufficient to bar punishment. N. A. R. vol. 3, page 238. Where the prisoners swore before the magistrate that they had witnessed fighting in an affray though without being able to distinguish the dealers and receivers of blows, and afterwards denied before the sessions court that they had seen fighting at all, they were acquitted by the futwa on the ground of perplexity of mind, but convicted by the court and sentenced to two years' imprisonment. N. A. R. vol. 3, page 255. A chokeedar deposed before the magistrate in a case of dacoity under investigation that no dacoity had taken place; and seven days after on being re-examined admitted his first deposition to have been false, declaring that on visiting the premises after the robbery he had observed the signs of a dacoity having been perpetrated; the session judge held that this did not amount to "giving wilfully two statements directly at variance with each other," but the sudder court convicted the prisoner, and he was sentenced for the perjury to imprisonment for one year with labor. N. A. R. vol. 6, page 47. In the investigation of an affray attended, with murder in the Alipore jail, a duffadar of the jail-guard deposed

(*a*) Under the Mahomedan law, if the false charge is retracted before the person accused has suffered any injury from the accusation, the false accuser is not subjected to the penalty for perjury, but is liable to discretionary punishment.

before the magistrate that on hearing the noise he had quitted the place where he was on guard, and had run to the spot where the prisoners were fighting; before the commissioner he deposed that he did not quit the spot where he was on guard and that he knew nothing of the disturbance except from hearsay; he was convicted of perjury, but discharged with reference to the imprisonment he had already undergone. N. A. R. vol. 4, page 101. In a case of assault one of the witnesses first deposed to the truth of the complaint, and was afterwards compelled by intimidation to give his evidence on behalf of the defendant in direct opposition to that which he had previously given; he was sentenced for the perjury to imprisonment for 3 months; and the defendant who had brought him forward in the second instance was convicted of subornation of perjury, and sentenced to imprisonment for 3 years with labor in irons. N. A. R. vol. 5, page 109. Where a witness in order to induce the magistrate to place more confidence on his evidence swore that a certain woman was his cousin, whereas in truth she was his sister, he was sentenced for the perjury to imprisonment for one year. N. A. R. vol. 5, page 175. So, where a witness, in order to gain greater credit, swore falsely as to the evidence which he had given in a former suit, he was sentenced to 6 months' imprisonment. N. A. R. vol. 5, page 110. So, where a witness for the defence in a case of theft falsely denied on oath that the prisoner was his brother, declaring that he was his cousin, with a view to obtain credit to his statement of the honest acquisition of certain property by the prisoner, the nizamut adawlut considered a sentence of one year's imprisonment sufficient. N. A. R. vol. 4, page 259. And so, where a father, aged 70, denied that the prisoner, who had called him to prove an alibi, was his son, with the same intent, he was sentenced to imprisonment without labor, and irons for 3 months. N. A. R. vol. 2, page 313. On the trial of a darogah for the corrupt receipt of a horse, a burkundaz of the thana swore that the prisoner had not received the horse as alleged by the prosecutor, but had purchased it from a peasant; this statement he afterwards acknowledged to be false, declaring that he was instigated to swear falsely by the darogah, who had threatened him with vengeance if he disclosed the truth; he was sentenced, under the impression that he had been actuated in the first instance by dread of his official superior, to be imprisoned with labor for one year and a half. N. A. R. vol. 3, page 70. Where a person, called upon to prove on oath his sufficiency as security for another, deposed that his property was free from incumbrance, and eight days after came forward and acknowledged that his property was at the time of his former deposition mortgaged to its full extent, he was sentenced to imprisonment for one year. N. A. R. vol. 1, page 159.

Cases of perjury by false personation.

4518. Where the prisoner charged several persons with carrying him away and confining him, and it appeared that his brother was the party injured, and that he had come forward merely on account of the indisposition of his brother, he was sentenced to imprisonment for 3 years. N. A. R. vol. 4, page 99. A prisoner convicted of having wilfully perjured himself by giving his deposition under a feigned name, was sentenced to imprisonment for 3 years; and his brother-in-law, who deposed to his identity with the individual whom he personated, was sentenced to imprisonment for 2 years, both with labor in irons. N. A. R. vol. 5, page 58. Where the prisoner gave evidence under different names in two civil

suits, between the same parties, denying on the last occasion his identity with the witness who had given evidence in the first case, he was sentenced for perjury to imprisonment for one year. N. A. R. vol. 5, page 144. So, where the brother of a person summoned as a witness came forward, and gave evidence on oath in the name of his brother, he was sentenced to one year's imprisonment. N. A. R. vol. 4, page 260. And so, where the prisoner personated another, and swore falsely that he was present at an affray, and it appeared that his sole object was to oblige the individual whom he personated, he was sentenced to 3 months' imprisonment. N. A. R. vol. 2, page 204. Where a person came forward to attest the signature to a power of attorney in the room of one who had witnessed it and under his name, but the false personation was discovered before he had given his deposition,(a) he was sentenced, to imprisonment for 6 months; and the person who had brought him forward was sentenced, for subornation of the perjury, to imprisonment for one year. N. A. R. vol. 4, page 97. So, where in attesting a deed of acquittance before a register of deeds the witnesses present forgot the names of the contracting parties, and the attorney declaring that he had another witness in attendance took one of those witnesses out of court and altered his dress, and re-produced him in that disguise under the name of another of the subscribing witnesses, and the witness after having given his deposition under such false name was recognised by the register as the person who had previously appeared; the witness was sentenced for the perjury to imprisonment for 6 months, and the attorney for subornation of the perjury to imprisonment for one year, both without labor: it is to be observed that in this case there was no record of the perjury, as the depositions of witnesses attesting deeds before a register are not committed to writing. N. A. R. vol. 5, page 78. Where the prisoner was convicted of having produced a person to give evidence in a court of justice under a fictitious name, he was convicted of subornation of perjury, though the perjury was not completed, the fraud having been discovered before the witness was put upon his oath, and was sentenced to imprisonment with labor for 2 years. N. A. R. vol. 2, page 363. In a similar case, the person in whose favor the perjury was committed, was acquitted on the ground that he was a minor, being only fourteen or fifteen years of age, and that, although present in court during the commission of the perjury, yet he was not personally concerned in the subornation, as the suit was conducted by his gomashtah and general agent. N. A. R. vol. 3, page 280.

Cases in civil courts with intent to defraud.

4519. Where two witnesses swore under fictitious names to the execution of a forged ikrarnamah, they were convicted of perjury; and the mokhtar who had introduced them, being well acquainted with the person and real name of one of the witnesses, was convicted of subornation of perjury; and all three were sentenced to stripes, tusheer, and imprisonment for 7 years; the vakeel employed in the case was acquitted of the charge of subornation, but was dismissed from his office of pleader in consequence of the strong

(a) The report does not show very clearly, but it is to be presumed, that the perjury was completed by the giving on oath a false name; for it is expressly mentioned that the questions *were about to be put* to the witness, when the false personation was pointed out by a bystander.

suspicion which rested against him of having been concerned therein. N. A. R. vol. 1, page 293. Where the prisoner in a civil suit denied on oath that he had disposed of some ancestral property to a certain person, and five years afterwards in another suit contradicted that testimony by admitting on oath and proving by deeds that he had sold it to that person, and the denial was shown to have been material to the issue of the suit, he was sentenced to imprisonment for 3 years. N. A. R. vol. 2, page 202. A prisoner swore to having witnessed the payment of a sum of money on a certain day, on which date, and during many months before and after it, he was a prisoner in jail under a sentence for theft, which rendered it physically impossible that he could have witnessed the transaction; he was convicted of perjury; and his production as a witness by the person who was to benefit by the perjury was held to afford sufficient presumptive evidence against the latter to convict him of subornation of perjury; both were sentenced to imprisonment with labor for 3 years. N. A. R. vol. 2, page 361: In a similar case, where the prisoner, aged 70, swore to the authenticity of a forged receipt, he was convicted of perjury and sentenced to 2 years' imprisonment with labor. N. A. R. vol. 4, page 58. The wilful concealment of bond-debts and other property by an insolvent debtor, when examined on oath under the rules of sect. 11, Reg. II. 1806, has been punished as perjury by imprisonment for 3 years. N. A. R. vol. 5, pages 62 and 167.

NOTE.

Perjury at common law in England is defined to be a wilful false oath by one who, being lawfully required to depose the truth in any proceeding in a court of justice, swears absolutely in a matter of some consequence to the point in question, whether he be believed or not. The proceedings however are not confined to courts of justice.—No oath taken before persons acting merely in a private capacity; or before those who take upon them to administer oaths of a public nature without legal authority; or before those who are authorized to administer some oaths, but not that which happens to be taken before them; or even before those who take upon them to administer justice by virtue of an authority seemingly colourable, but in truth void; can ever amount to perjury in the eye of the law, for they are of no manner of force.—But any false oath is punishable as perjury which tends to mislead a court in any of its proceedings relating to a matter judicially before it, though it in no way affects the principal judgment which is to be given in the cause; as an oath made by a person offering himself as bail. And not only such oaths as are taken on judicial proceedings, but also such as any way tend to abuse the administration of justice are properly perjuries, as an oath before a justice to compel another to find sureties of the peace. A man may be indicted for perjury in an oath taken by him in his own cause, as well as in an oath taken by him as a witness in the cause of another person.—The object with which the oath was taken need not be carried into effect, for the perjury is complete at the moment when the oath is taken, whatever be the subsequent proceedings; as in the case of an affidavit which could not be received in the court.—It was formerly thought that an oath did not amount to perjury unless sworn in absolute and direct terms, and that if a man swore according as he *thought, remembered,* or *believed* only, he could not be convicted of perjury: but the modern doctrine is otherwise: it is said by Lord Mansfield to be certainly true, that a man may be indicted for perjury in swearing that he *believes* a fact to be true, which he knows to be false. So perjury may be committed by swearing to a statement which in one sense is true, but which, in the sense intended to be impressed by the party swearing, is false; as where a witness swore that he left the party, whose health was in question, in such a way that, were he to go on as he then was, he would not live two hours; and it afterwards turned out that the man was very well, but had got a bottle of gin to his mouth; and true it was, in a sense of equivocation, that had he continued to pour the liquor down, he would in much less time than two hours have been a dead man. As regards perjury for a mere matter of opinion, Mr. Alison, in his principles of the criminal law of Scotland, says; "If the matter sworn to be one of opinion only, as a medical opinion, it cannot in the general case be made the foundation of a prosecution for perjury: but though a medical or scientific opinion cannot in general be challenged as perjury, because the uncertainty and division of opinion in the medical profession is proverbial, yet if it assert a fact, or draw an inference evidently false (as, for example, if a medical attendant swear that a person is unfit to travel

who is in perfect health, or an architect declare a tenement to be ruined which is in good condition) certainly the gross falsehood of such an assertion shall in neither case be protected by the plea that it related to a matter of professional investigation."—Whether a witness can be convicted of perjury, in answer to a question which he could not legally be called upon to answer, but which is material to the point in issue, is doubtful.—The defendant, although perjury be assigned in his answer, deposition, or affidavit in writing, may prove that an explanation was afterwards given, qualifying or limiting the first answer.—The materiality of the matter sworn to must depend upon the state of the cause, and the nature of the question in issue. If the oath is altogether foreign from the purpose, not tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the substantial part of the evidence, it cannot amount to perjury. As if upon a trial, in which the issue is whether such a one is *compos* or not, a witness introduces his evidence by giving an account of a journey which he took to see the party, and swears falsely in relation to some of the circumstances of the journey. Also it is said to have been resolved, that a witness who swore that one drew his dagger and beat and wounded J. S., when in truth he beat him with a staff, was not guilty of perjury, because the beating only was material. In such cases, it is said, it ought to be intended that the question was put in such a manner, that the witness might reasonably apprehend that the sole design of putting it was to be informed of the substantial part of it, which might induce him, through inadvertency, to take no notice of the circumstantial part, and give a general answer to the substantial; for otherwise, if it appear plainly that the scope of the question was to sift him as to his knowledge of the substance by examining him strictly as to the circumstances, and he gave a particular and distinct account of all the circumstances, which afterwards appeared to be false, he cannot but be guilty of perjury, inasmuch as nothing can be more apt to incline a jury to give credit to the substantial part of a man's evidence, than his appearing to have an exact and particular knowledge of all the circumstances relating to it. Upon these grounds the opinion of the judges seems to be very reasonable, who held a witness to be guilty of perjury who in an action for trespass by sheep deposed that he knew the sheep to be the defendant's, because they were marked with a mark which he knew to be the defendant's, whereas in truth the defendant never used such a mark; for the giving such a special reason for his remembrance could not but make his testimony the more credible than it would have been without it; and though it signified nothing to the merits of the cause, whether the sheep had any mark or not, yet inasmuch as the assigning such a circumstance in a thing immaterial had such a direct tendency to corroborate the evidence concerning what was most material, it was consequently equally prejudicial to the party, and equally criminal in its own nature, and equally tending to abuse the administration of justice as if the matter sworn had been the very point in issue.—Evidence is essential, not only to show that the witness swore falsely in fact, but also, as far as circumstances tend to such proof, to show that he did so corruptly, wilfully, and against his better knowledge. There must be proof that the false oath was taken with some degree of deliberation; for if, under all the circumstances of the case, it appears that it was owing to the weakness rather than the perverseness of the party, as where it is occasioned by surprise or inadvertence, or by a mistake with regard to the true state of the question, this would not amount to voluntary and corrupt perjury.—It is a general rule, that the testimony of a single witness is insufficient to convict on a charge of perjury, because there is in that case only one oath against another: but it seems that this means only, that the contradiction must be proved by not less than two direct witnesses; the taking of the oath and the facts deposed may be proved by one witness only. Also, if the perjury consists in the defendant's having sworn contrary to what he had before sworn upon the same subject, this is not within the rule above-mentioned; for the effect of the defendant's oath in the one case is neutralized by his oath in the other; and proof by one witness will, therefore, make the evidence against the defendant preponderate. But the contradiction of the one oath of the defendant by the other is not enough, for there is nothing to show which of the statements made by the defendant is the false one, where no evidence of the falsity is given. Upon this subject the following observations were made by Holroyd J.; "Although you may believe that on the one or other occasion the prisoner swore what was not true, it is not a necessary consequence that he committed perjury; for there are cases in which a person might very honestly and conscientiously swear to a particular fact from the best of his recollection and belief, and from other circumstances at a subsequent time be convinced that he was wrong, and swear to the reverse, without meaning to swear falsely either time." So, where the defendant was charged with perjury committed on a trial at the sessions, it was held that a deposition made by him before the magistrate entirely different from what he swore at the trial, was not in itself sufficient proof that the evidence he gave at the sessions was false, but that other confirmatory proof must be adduced to satisfy the jury that he swore falsely at the trial.—The party prejudiced is a competent witness to prove the offence.—*Roscoe's Digest.*

CHAPTER III.

OF FORGERY. (a)

Forged document must be produced.

4520. A charge of forgery cannot be sustained, when the document alleged to have been forged is not forthcoming. N. A. R. vol. 5, page 112.

Such documents not to be returned.

4521. Documents which are proved or suspected to be forgeries are not to be returned to the parties producing them. Const. No. 139.

Definition and conditions.

Principals and accomplices liable to same punishment.

4522. The penalties prescribed for forgery are meant to include all fraudulent and injurious fabrications or alterations of written deeds, or of written or printed papers, of whatever description; as well as all counterfeit seals or signatures thereto. It is further hereby declared, that persons convicted of procuring, or causing, any such forgery, are liable to the same punishment, as those convicted of having actually committed the forgery at the instigation of others. Reg. II. 1807, sect. 4, cl. 3.

There must be a fraudulent intention;

4523. In order to make the offence complete, there must be a fraudulent intent, that is to say a deceit practised with intent to damage another. N. A. R. vol. 6, page 215. Reports *L. P.* 1855, part 2, page 977. Thus, where the prisoner having tendered a security bond on plain paper, was directed to furnish it on stampt paper, and then copied the bond, including the names of the attesting witnesses, on paper of the proper value, which he then gave to the surety who signed it with his own hand, he was acquitted of forgery in copying the names of the witnesses, as he had no fraudulent intention in so doing. N. A. R. vol. 5, page 95. So, where the two prisoners, the peshkar and mir-munshi of a collector's office, were charged with forgery in having written certain deeds of sale, and therein fraudulently inserted the word "zumeendaree" (whereas the rights of the zumeendar were never sold), they were acquitted, as the mere fact of their having copied one of the deeds of sale was not deemed sufficient ground for inferring a fraudulent intent or knowledge of the forgery, and there was no proof whatever that either of them drafted or compared the deeds, or held any communication with the purchaser, or in any way profited by the forgeries. N. A. R. vol. 4, page 53. So, as to antedate and postdate papers is very common among the natives without any fraudulent purpose, the court refused to admit such fact alone to be evidence of forgery. N. A. R. vol 2, page 36. And the affixing the name of another in his absence, but with the permission of his constituted agent, to a security bond, was held not to amount to forgery, as the prisoners were actuated by no fraudulent intention. N. A. R. vol. 1, page 253. Reports *L. P.* 1851, page 729.

so, to antedate or postdate a deed is not in itself forgery;

so, the mere signing another person's name is not necessarily forgery.

The execution of two deeds of sale or lease of the same lands is a fraud, and does not amount to forgery.

4524. It seems that the execution of two deeds of sale or lease of the same estate to different persons, does not amount to forgery; it is merely a fraud: but it does not clearly

(a) The forgery here meant does not refer to the forging of counterfeit coin, public stamps, public securities, or bank-notes, which have been placed under the head of coining, in chapter 1 of book 4; see page 637: and the rules regarding the using, issuing, selling, or disposing of, such counterfeit coin, stamps, bank-notes, promissory notes, or other securities for money, knowing the same to be counterfeit; and for having in possession such counterfeit coin or stamps without lawful excuse; will be found in the same place.

appear from either of the reported cases whether it would become forgery, if the subsequent conveyance were antedated for the purpose of avoiding the former one; as is held in English law.—A prisoner tried on a charge of forgery cannot be convicted of fraud; but it is sufficient if the two offences are charged in separate counts. N. A. R. vol. 2, page 50; and vol. 6, page 2.

It is not necessary that there should be any writing; it is sufficient if the seal be forged, though the paper be blank.

4525. To the offence of fabrication in the above definition it is not necessary that there should be any writing; it is sufficient that the seal be forged, though the paper be blank. Thus, where a number of blank papers with forged seals at the top were found in the possession of one of the prisoners, he was convicted on violent presumption of fabricating papers with false seals; and was sentenced, as well as another prisoner convicted of selling the same knowing them to be false, to imprisonment for 7 years. N. A. R. vol. 2, page 3. In a similar case, the prisoner convicted on violent presumption of the forgery was sentenced to tusheer and imprisonment with labour for 7 years, and the other prisoners convicted of privity to and concealment of the same were sentenced to 2 years' imprisonment with hard labour. N. A. R. vol. 2, page 405. Reports *L. P.* 1851, page 789.

The writing a petition signed with the names of other parties may be forgery.

4526. The writing a petition, accusing certain authorities of bribery, under the name of another person, was held to be forgery; as the tendency of such false representation was directly injurious, both to the persons aspersed therein and to the professed writer. Reports *W. P.* 1854, part 1, page 365.

The instrument must have the appearance of being genuine.

4527. It is also essential that the instrument be such as is calculated to obtain false credit, *i. e.* that credit which would be due to it if it were genuine. In essential parts it must bear upon the face of it the similitude of the true instrument; but it is not necessary that it should bear an exact resemblance to the original, provided it so far resemble it as to be likely to be mistaken for it by any common observer. Thus it was held that a conviction of forging a subpœna could not be had, when the fabricated document bore neither seal nor signature. Reports *L. P.* 1853, part 1, page 43.

It is no excuse that the prosecutor entrapped the prisoner into self-crimination.

4528. Where the prosecutor suspected the prisoner of having forged receipts in his name, and employed a person to obtain from the prisoner such forged receipts, and the commitment was made on the charge of forging these documents, the court held that the mode adopted of entrapping the prisoner into self-crimination and the commission of an overt act of fabrication, did not involve any illegality. Held also that the forgery was complete without publication. Reports *W. P.* 1855, part 1, page 530.

Magistrate cannot search a house for forged papers on the requisition of the civil court.

But proof so obtained may be accepted to establish forgery of papers voluntarily filed.

4529. When a magistrate searched a house for forged papers on the requisition of a civil court, before which the suit was pending, it was held that such a proceeding was not warranted by law; and also that a charge of forgery founded on papers so obtained could not be sustained. But the proceedings were not vitiated in regard to papers voluntarily filed, and the proof of the forgery, as established by the production of other papers found in the house when so illegally searched, was admitted. Reports *W. P.* 1855, part 1, pages 712 and 948.

Mere possession of a forged bank-note is not punishable;

4530. The having a forged bank-note in possession is not declared to be a punishable offence by Reg. XVII. 1817, or any other regulation in force. Const. No. 361.

or the mere possession of seals bearing the names of other persons.

4531. The mere possession of seals bearing the names of other individuals does not constitute a punishable offence; as a seal-cutter or any other man may have such seals without committing the crime of forgery, and indeed without any imputation of a criminal offence. N. A. R. vol. 3, page 153.

Persons concerned in forging lakhiraj grants, or altering them in any respect, liable to a criminal prosecution.

4532. If it appears to any court of judicature during the course of a trial, that a grant for land to be held exempt from the payment of revenue, whether badshahee or otherwise, has been forged, or that the name of the original grantee has been erased and any other name substituted, or that any name not in the original grant has been erased or altered or inserted, or that the denomination or the terms of the tenure in the original grant have been erased or altered, or that the date of the grant has been changed, or that the grant has been antedated, the grant is to be adjudged null and void, as far as regards the exemption of the land from the payment of revenue, and the land is to be subjected to the payment of revenue accordingly. And any person by whom any such fraud appears to have been committed, or who has been concerned therein, is, provided the court is of opinion that there are sufficient grounds for a criminal prosecution, to be committed or held to bail (according to the circumstances of the case) to take his trial before the sessions court.* *Beng.* Reg. XIX. 1793, sect. 18; and Reg. XXXVII. 1793, sect 13. *Ben.* Reg. XLI. 1795, sect. 18; and Reg. XLII. 1795, sect. 13. *Ced. Prov.* Reg. XXXI. 1803, sect. 13; and Reg. XXXVI. 1803, sect. 13.

* *See para.* 4535.

Registers of deeds are to prosecute criminally any person counterfeiting or falsifying any entry in the register books.

4533. If any person or persons shall at any time be suspected, on sufficient grounds for commitment, of counterfeiting or falsifying any entry in any of the register books ordered to be kept, or any certificate such as is directed to be granted, by this regulation [for the registry of deeds], he or they are to be prosecuted on the part of government in the criminal court of judicature; and the several registers are, as agents for the prosecution, to adopt every legal measure in their power for the proof of the crime, and the due execution of the laws against the offender. *Beng.* Reg. XXXVI. 1793, sect. 12. *Ced. Prov.* Reg. XVII. 1803, sect. 12.

Putwaree altering, fabricating, falsifying, or mutilating, the accounts of his village, or furnishing false, fabricated, or mutilated copies of the accounts—is to be held guilty of forgery;

4534. Any putwaree who alters, fabricates, falsifies, or mutilates, the accounts of the village to which he belongs, or furnishes to the canoongoe or collector false, fabricated, or mutilated copies of those accounts, is to be held and considered guilty of forgery; and is liable, on conviction before a sessions court, to the penalties which are or may be prescribed for that offence in the regulations; and any person, who causes or procures any such forgery, is liable to the same penalties as those convicted of having actually committed the offence.—This rule is applicable to all native agents employed by proprietors or farmers of land in the management of their estates or farms, or in keeping the accounts relating to them; and to proprietors or farmers of land, or their gomashtahs or other officers, where no putwaree is appointed. Reg. XII. 1817, sects. 27, 30, and 33.

but the intent must be fraudulent.

4535. In order to obtain conviction under the preceding rule, it must be shown that the putwarce had a fraudulent intention, and was not acting in good faith. Reports *W. P.* 1855, part 1, page 18.

Commitment.

Magistrates are not to receive charges of forgery, or of knowingly giving effect to false and fabricated papers, in cases before other courts;

4536. Within the territories subject to the presidency of Fort William in Bengal except the local limits of the courts established by her majesty's charter, the magistrates are not to receive any charges of forgery, or of procuring or causing forgery, or of fraudulently issuing and publishing as true, or otherwise fraudulently giving effect to or attempting to give effect to false and fabricated deeds and papers, knowing the same to be false and fabricated, which may be preferred by parties to civil or criminal cases, in respect to deeds and papers offered in evidence in such cases against the adverse parties to such cases, or other persons, except as provided in the next following section. Act I. 1848, sect. 1.

unless such courts make the cases over to them.

4537. In cases pending before any civil or criminal court (except the court of the magistrate, or of any officer exercising the committing powers of a magistrate) in which there appears to the court sufficient grounds for sending for investigation to the magistrate a charge

Mode of procedure in such cases.

of any of the offences specified in section 1 of this Act, the court is to send the party or parties accused in custody to the magistrate, together with the evidence and documents relevant to the charge, and is to take a recognizance from each of the witnesses who have given such evidence to appear before the magistrate, who is thereupon to receive such charge and to proceed with it in the usual course. Provided always that nothing herein contained is to be construed to affect the powers vested in session judges in cases of forgery by sect. 6. Reg. II. 1807. Act I. 1848, sect. 2.

Session judge how to proceed if any witness or party attending the court is guilty of such offence.

4538. Whenever a witness giving evidence before a sessions court is considered by the judge of that court to be guilty of forgery, in any trial or matter depending before the court, and the whole of the witnesses required for the proof of the charge and for the defence of the accused are also in attendance, it is competent to the session judge to direct the magistrate to commit the person so charged for immediate trial before the sessions court. Provided that nothing in this section is to be construed to authorize the conviction or punishment of any person, charged with the crime specified, until he has been regularly put upon his trial; or until any material evidence which he has to offer in his defence has been received and duly considered. Reg. II. 1807, sect. 6.

4539. In all cases of forgery brought to light in the course of criminal judicial proceedings, it is incumbent on the session judge to conform to the rule prescribed above; and it is not optional with him to declare the party aggrieved by such forgery at liberty to institute a prosecution in the criminal court. C. O. No. 225 of vol. 3.

The same rule applies to the courts of revenue officers acting judicially.

4540. For the purposes of this Act, the expression "civil courts" is to be held to include all revenue officers acting judicially. Act I. 1848, sect. 5.

Act I. 1848 applies only to deeds and papers offered in evidence.

4541. The procedure laid down in Act I. 1848 is restricted by the terms of that enactment to deeds and papers offered in evidence. In all other cases of forgery brought to light in the course of judicial proceedings, the *Western Court* holds that the C. O. of the 13th

March, 1846 (No. 225 of vol. 3), which directs the courts to conform strictly to the rules prescribed for adoption in cases of perjury by the provisions of sect. 2, Reg III. 1801, sect. 3, Reg. VIII. 1813, sect. 14, Reg. IV. 1793 (corresponding with sect. 8, Reg. III. 1803), and sect. 14, Reg. XVII. 1817, is to be regarded as the authoritative rule of procedure. In such cases [therefore, according to this ruling of the *Western Court*] it is not optional with the civil courts either to commit the accused for trial before a special sessions or to direct a prosecution for forgery, or to declare the party aggrieved by such forgery at liberty to institute a prosecution in the criminal court, as to them may seem fitting; but it is incumbent upon the judge to commit the case at once to the sessions under the rules quoted. C. O. S. D. A. No. 11, April 5, 1853, *W. P.* It is to be observed however that, in the cases which have been reported, the civil courts have not committed the prisoners, but have forwarded the papers to the magistrate, who has conducted the proceedings as in a private prosecution; see cases quoted below in paras. 4547, 4548, and 4556. And this procedure which has been adopted by the *Calcutta Court* appears to be correct.

In other cases before civil courts the *Western Court* holds that the judge must proceed under the rules previously in force.

4542. Where a document brought for registry was found to be forged, and the register of deeds sent the parties to the judge, and the judge directed the magistrate to try the accused parties and to commit them for trial if the charge should be proved, it was held that such course was illegal, as no case was pending in the civil court; the proceedings were quashed, and the aggrieved parties were left to commence proceedings in the usual course. The provisions of Act I. 1848 are confined to cases before the civil and criminal courts. Consequently prosecutions for forgery brought to light in proceedings before a register of deeds must be instituted before the magistrate, in the same manner as for any other forgery not committed before a civil or criminal court, *i. e.* on the information on oath or solemn affirmation of the aggrieved person. Reports *L. P.* 1854, part 2, pages 533 and 624; and 1855, part 1, page 651.

The *Calcutta Court* holds that when no case is pending the civil courts cannot interfere;

4543. The rules for the prosecution of forgeries under Act I. 1848, are not intended to exclude from the cognizance of the magisterial authorities prosecutions for forgery, which may be instituted irrespectively of proceedings in any civil or criminal court. The magistrate is prohibited by the above law only from entertaining charges preferred by parties to *pending* civil or criminal cases, without the sanction of the presiding authority of the court in which they may be pending. C. O. No. 225 of vol. 3. Reports *L. P.* 1854, part 2, page 624.

that magistrates are prohibited from entertaining charges of forgery only when they are preferred in regard to papers filed in suits *pending* in other courts;

4544. When the case is made over to the magistrate by a collector not acting judicially, the charge must be preferred on oath, as required by sect. 4, Reg. IX. 1807. Reports *L. P.* 1851, page 1666; and 1855, part 2, page 21.

and that the charge must be preferred on oath to the magistrate, if Act I. 1848 is not applicable;

4545. In the case of a forged mokhtarnamah filed in the collectorate with a view to obtain a sum of malikana, which was not due, it was held that the collector acted correctly in making over the case to the magistrate on the prosecution of government, as in the event of obtaining such money the government would have been the party defrauded. Reports *L. P.* 1854, part 2, page 659; and 1855, part 1, page 156.

or by the government pleader, where government is the party defrauded.

Act I. 1848 refers to miscellaneous as well as to regular cases.

4546. Where the prisoner altered a certificate for the refund of stamp duty and obtained thirty-two instead of sixteen rupees, and the civil judge sent the case to the magistrate for investigation, the proceedings were considered regular, because Act I. 1848 refers to miscellaneous as well as to regular cases. Reports *L. P.* 1857, part 2, page 83.

In a miscellaneous case arising out of a fraudulent alteration of a document in the judge's own office, he can refer the case to the magistrate, but not under Act I. 1848.

4547. Where a person applied to the civil judge for copy of a document with the intention of filing it in a suit pending before the moonsiff, and the prisoner took the opportunity of making a fraudulent alteration in the original, it was held that Act I. 1848 did not apply, as no case was pending; and that the judge acted rightly in making over the case, under C. O. No 225 of vol. 3, to the magistrate who was legally competent to commit the parties, on the charge preferred by the record keeper of the judge's office to his superior, and by him referred to the magistrate for investigation. Reports *W. P.* 1854, part 2, page 524.

Where a document was altered in the magistrate's office and a copy of it so altered was filed in the civil court, held that the magistrate could proceed without reference from the court.

In that case the copy had not been taken out and filed in the civil court; but even in the case where a record of his own office was fraudulently altered with a similar intent, and the copy was taken out and filed in the civil court, it was held that the magistrate was justified in taking up the case without waiting for any order of reference from the civil court. Reports *W. P.* 1855, part 2, page 885. In these cases it is to be observed that the *copies* could not be said to be forged or fraudulently altered, and the cases were necessarily initiated by the offices in which the fraudulent alterations of the original documents were made.

Where a forged document was filed in execution of decree, the *Western Court* held that the court was justified in referring the case to the magistrate without reference to Act I. 1848;

but in a similar case, the *Calcutta Court* sanctioned a trial instituted under that Act.

4548. When the collector judicially decreed the release of certain attached grain, and a forged receipt of the previous release of it was filed by the kazee in order to conceal official laches, it was held that the document was not filed while the case was pending, and that the collector was therefore justified in making the case over to the magistrate without reference to the rules of Act I. 1848. Reports *W. P.* 1855, part 1, page 938.

4549. But where a forged mokhtarnamah was filed in a civil court with an application to stay a sale in execution of decree, and the principal sudder ameen made over the proceedings and parties to the magistrate under Act I. 1848, the sentence passed by the sessions court was confirmed on appeal. Reports *L. P.* 1852, part 2, page 901.

A charge of forging a vakalutnamah in a civil court may be preferred direct to the magistrate, because it is not a paper offered in evidence.

4550. The court held that a magistrate was justified in taking up a charge of forgery not sent to him by the civil court, but preferred by an individual, who alleged that certain parties had forged and uttered a vakalutnamah as in his name in a case disposed of in the civil court two months previously, under which a fictitious confession of judgment was given in his name, he really knowing nothing whatever of the matter. The ground of this ruling was that the vakalutnamah was not "a deed or paper offered in evidence by an adverse party." The principle of Act I. 1848, and of the laws generally regarding forgery and perjury is that, where parties are or may be before the court trying the case, allegations of the above class of offences, in regard to deeds and papers produced in proof of the case, ought to be brought, and can best be determined on, by the court before whom the whole case is under examination; and that a subsequent liberty of prosecution before a magistrate, *on the same matter*, would only lead to serious abuse. This principle seems obviously quite inapplicable, when the allegation is that a party was not before the court

trying the case at all, knew nothing of the suit in which a false admission was recorded in his name, and could therefore have had no means of bringing any charge before that court. In such a case there is nothing in the spirit or intent, or still more certainly in the letter, of Act I. 1848, which restricts a direct application to the magistrate, or the powers of the magistrate himself. Reports *L. P.* 1851, page 1. On the ruling contained in the above case the court held that it was not competent to the civil court to entertain a charge of forgery of a vakalutnamah; and that such charge *must be* preferred direct to the magistrate. Reports *L. P.* 1851, page 1115. But where a magistrate, after receiving such case, allowed the prosecutor on his own petition to stand as plaintiff in the same position in which he would have been if the civil court had taken no notice of the case, it was held that the indictment was good, and that the irregularity of the civil court had been corrected. Reports *L. P.* 1855, part 1, page 789.

Subordinate courts should refer direct to magistrate.

4551. A subordinate civil court is competent to send a charge of forgery direct to the magistrate for enquiry. He need not send it to the judge for reference to the magistrate. Reports *L. P.* 1856, part 1, page 345.

No appeal lies from order under the Act.

4552. No appeal lies to the judge from the order of a subordinate court passed under Act I. 1848. Reports *W. P.* 1855, part 1, page 65.

A forgery overlooked in the court in which the paper was filed, may be taken up by another court only when the case comes regularly before it.

4553. Where a forged document was filed in evidence in a summary suit, and the collector took no notice of it, it was held that the moonsiff was justified in founding on it a criminal prosecution, when the papers came before him in a regular suit brought to set aside the collector's award. Reports *W. P.* 1858, part 2, page 821.

4554. But where a civil suit was pending in the moonsiff's court, and the judge, on the petition of the defendant accusing the plaintiff of forgery, sent for the case, and ultimately, without trying the civil claim judicially, made over the charge of forgery to the magistrate, it was held that his proceedings were illegal, as there was no suit pending in his court. N. A. R. vol. 6, page 318.

A case cannot be sent to a magistrate for trial without strong grounds for presuming forgery.

4555. Under the provisions of Act I. 1848 it is not competent to a session judge *suspecting* forgery, or doubting the genuineness of a document, to direct a magistrate to institute enquiries, and to collect evidence, with a view to ascertain whether a deed, filed with the proceedings in a case before him, be a forgery or not; nor is it competent to a magistrate to receive and proceed with a case so brought before him. If however there is enough on the record to afford strong grounds for presuming that a person has either forged a deed himself, or uttered it knowing it to be a forgery, it is competent to the judge to send him, charged with that specific crime, together with the necessary evidence at once to the magistrate to be tried on such a charge. N. A. R. vol. 6, page 284. It is not necessary to the legality of such procedure on the part of the civil court that any party should prefer a charge of forgery before it. The judge may originate the charge and proceed *proprio motu*. Reports *L. P.* 1854, part 1, page 454.

The civil court proceeds proprio motu.

The magistrate cannot prosecute any parties not es-

4556. When a case is made over to the magistrate by a civil court, either under Act I. 1848 or under C. O. No. 225 of vol. 3, it must be prosecuted in regard to those persons only

pecially mentioned by the court;

whom the civil court indicates. The intent of the law is clearly that the criminal authorities shall not initiate proceedings against any person not distinctly charged by the civil court in which the forged deed is filed. Reports *W. P.* 1853, part 1, page 347; and 1855, part 1, page 200.(a)

but it is not necessary that the civil court should make them over in custody

The letter of the law requires that the accused parties should be made over in custody; but the intention is sufficiently complied with, if the civil court indicates by name in the proceeding, under which it refers the case for investigation, the particular party or parties whose conduct is to form the subject of judicial enquiry. Reports *W. P.* 1853, part 2, page 1264; and 1855, part 1, page 948.

Omission of name cannot be rectified after disposal of suit.

The omission of the names of any of the parties concerned cannot be cured by a subsequent proceeding of the civil court held after the conclusion of the case. Reports *W. P.* 1856, part 1, page 68.

It is not necessary that the original suit should be pending, if it has been transferred to the miscellaneous file

4557. Although the original suit has been concluded, it is sufficient, if the case continues to be borne upon the file of the civil court in the miscellaneous department, pending a final order regarding the reference of the case to the magistrate under Act I. 1848, and if an order be eventually passed for such reference. Reports *W. P.* 1856, part 1, page 68.

And it is sufficient if the proceedings in the civil court commence while the case is pending.

4558. And where the enquiry into a charge of forgery was commenced while the case was pending in the civil court, the *Western* court held that the proceedings in the sessions court were not vitiated by the fact that the case was no longer pending when the prisoner was sent by the court to the magistrate. Reports *W. P.* 1851, page 29; and 1855, part 2, page 338.

Private prosecutions

Collector may prosecute on the part of the court of wards;

4559. A private individual may prosecute for forgery or uttering a forged document. And where a minor under the court of wards is the person interested, the collector, as the legally constituted agent of the court of wards, is competent to prosecute on the part of that court without any special authority from the board of revenue or the commissioner. Reports *L. P.* 1852, part 2, page 424.

(a) This ruling appears questionable The order of reference passed by the civil court under Act I 1848 is only equivalent to the credible information, which authorizes a magistrate to initiate proceedings in the case of a heinous offence without the written complaint supported by an oath, which would otherwise be requisite After such legal initiation, the Act requires him, "to proceed with the charge in the usual course;" and that in the case of any other offence would involve the investigation of all the circumstances of the case and the commitment for trial of every person against whom the evidence adduced for the prosecution establishes the charge The intent of the law is inadequately set forth in the judgment quoted in the text. It is to prevent the criminal courts from allowing the initiation of charges which would embarrass the proceedings of the civil court, not to obstruct the prosecution of any guilty person The rule was established by Reg III. 1801 in regard to charge of perjury, because it was found to be a very prevalent practice for parties to prefer unfounded charges of perjury against the witnesses of their opponents; and it has since been made applicable to charges of forgery, as a cognate class of offences tending to the same embarrassment. But it is not contended, nor is it possible, that the proceedings could be in any way embarrassed by the arrest and punishment of other parties than those named by the court, when such court has duly authorized the magistrate to investigate the case. The difference between perjury and forgery, when brought to light in a civil court, is that in the former the offence is complete in itself, while in the latter a protracted enquiry is requisite before proof sufficient to convict the guilty parties can be adduced. This ruling of the court therefore affords an effectual screen from punishment for all those (including possibly the real forgers and instigators) whose names do not appear in the summary enquiry of the civil court; and consequently its correctness may be considered at least doubtful, since it is opposed to the spirit, and is not strictly required by the letter, of the law.

but in such case the proceedings must be initiated before the magistrate by a written charge supported by an oath.

4560. Where a case of forgery was taken up by the magistrate as sent by the collector, acting as agent for the court of wards, and not *judicially*; and no charge on oath was preferred to the magistrate; the proceedings of the magistrate and the commitment to the sessions, and consequently the trial, were all held to be invalid, and quashed. The collector was informed that if, acting as agent for the court of wards, he was desirous of prosecuting the prisoners, he must proceed to prefer his charges in conformity with the Regulations and Acts in force. Reports *L. P.* 1851, page 1666.

Whether attesting witnesses to a forged deed may be committed as accomplices in the uttering.

4561. The *Calcutta Court* held that a charge of uttering a forged document cannot lie against the witnesses called to prove it merely on the ground of their attesting it on oath. This was ruled in the case of witnesses who swore before the register of deeds that they had witnessed the signing of a forged deed. Reports *L. P.* 1856, part 1, page 843. But the *Western Court* held in opposition to the Calcutta Court, after correspondence between the courts, that a civil court, making over to the magistrate a case of forgery, can at the same time make over the subscribing witnesses, who have attested the suspected deed, on a charge of aiding and abetting in giving effect to forged deeds, instead of proceeding against them for perjury. They hold that, in the majority of such cases, parties falsely attesting and verifying forged instruments as subscribing witnesses must be regarded as accomplices in the main offence, and, indeed, as part of the machinery indispensable for the completion and execution of the fraud. Reports *W. P.* 1852, page 1349; and 1855, part 1, page 948.

The magistrate cannot commit on evidence before the civil court. He must institute a regular enquiry.

4562. When the principal sudder ameen took up a charge of forgery, and having completed the enquiry directed the magistrate to prepare the calendar agreeably to the roobakaree and to commit the prisoners for trial before the sessions court; and that officer made the commitment without taking any evidence; the sudder court held that the proceedings were irregular and that the subsequent trial and conviction by the session judge were vitiated thereby. Under the provisions of Act I. 1848, the magistrate was bound to proceed in the usual course, *i. e.* by regular enquiry and examination of the parties and the witnesses, making the commitment only if he should consider the charge proved. Reports *W. P.* 1851, page 373.

Charges how to be drawn up.

4563. Magistrates are required to draw up charges as nearly as is possible in the language of the law; that is, describing the offence as a fraudulent and injurious fabrication, or (as it may be) alteration, of a written deed or other paper, and stating explicitly in what the alteration or fabrication consists, or how much of the paper it comprises. C. O. No. 57, May 25, 1858. *L. P.*

4564. In a case of uttering, the place where the uttering took place must be specified in the charge. Reports *L. P.* 1856, part 1, page 843.

4565. A conviction of procuring forgery cannot be had on a charge of forgery. Reports *W. P.* 1853, part 2, page 1063.

A case of forgery made over to the magistrate by a

4566. Where the acting principal sudder ameen at the time of dismissing a civil suit, considered that there was proof of perjury and its subornation against the witness and plain-

civil court is not vitiated by the mere reference at the same time of the charge of perjury

tiff, and authorized further enquiries, which elicited the evidence of its kindred offence of forgery; and the principal sudder ameen completed the enquiry and made over the defendants to the magistrate on the charge of forgery and perjury, the court held that the proceedings were quite regular as regarded the forgery, and that they were not vitiated by the irregularity in regard to the perjury. Reports *W. P.* 1851, page 66.

Separate trials must be held, where the civil court commits for perjury and the magistrate commits for forgery in the same case.

4567. When the civil court commits for perjury, and the magistrate commits for forgery arising out of the same transaction,—and no other course can be legally adopted in the case of a forgery supported by perjury, which has been brought to light in the civil court,—it is not competent to the session judge to dispose of both commitments in a single trial. He must hold two separate trials. Reports *W. P.* 1852, page 1349; and 1853, part 1, page 316, and 347.

Penalties.

What sentence may be awarded in cases of forgery, or procuring forgery.

4568. If any person amenable to the jurisdiction of a sessions court is convicted before that court whether by his free and voluntary confession, or by the testimony of credible witnesses, or by strong circumstantial evidence, of forgery, or procuring forgery, as defined in Reg. II. 1807, or Reg. XVII. 1817; and is, in consequence, by the futwa of the Mahomedan law officer of the sessions court, declared liable to discretionary punishment (tazeer, acoobut, or seasut); the session judge, provided he concurs with the law officer in the conviction of the prisoner, is to sentence him to receive thirty stripes [now commutable to two years' additional imprisonment], and to be imprisoned in banishment from the district for the period of seven years, unless the judge, on consideration of all the circumstances of the case, is of opinion that any part of the prescribed punishment is too severe; in which case he is authorized to mitigate the sentence to imprisonment, for any period not less than three years. Reg. II. 1807, sect. 3, cl. 1. Reg. XVII. 1817, sect. 9, cls. 1 and 2.

Session judge may refer the trial for mitigation of such sentence.

4569. If in any instance the session judge is of opinion, that a further mitigation or remission of punishment is necessary, he is, provided he concurs in the conviction of the prisoner, to pass sentence according to the preceding clause, and to refer the trial, with his sentiments at large, for the final sentence or order of the nizamut adawlut. Reg. XVII. 1817, sect. 9, cl. 3.

Trial to be referred, if session judge differs from his law officer.

4570. If the session judge differs in opinion from the law officer of his court, with respect to the conviction of the prisoner, he is not to pass any sentence, but is to transmit his own and the magistrate's proceedings, with his sentiments in a letter to accompany them, for the sentence of the nizamut adawlut. Reg. II. 1807, sect. 3, cl. 2.

Sentence to be passed by the nizamut adawlut.

* *But see para.* 1430.

4571. In cases of reference to the nizamut adawlut, this court, after taking the futwa of its law officers,* is, if the prisoner be convicted, to sentence him to any punishment deemed proper, not exceeding that specified above. Reg. II. 1807, sect 3, cl. 3.

Sentence to be passed on persons convicted of knowingly and fraudulently uttering forged instruments.

4572. If any person is convicted before a sessions court, or the court of nizamut adawlut, of the offence of fraudulently issuing and publishing as true, or otherwise fraudulently giving effect, or attempting to give effect, to fabricated deeds and papers, knowing the same to be false and fabricated; he is to be sentenced to imprisonment for such period, not

exceeding seven years, as the session judge deems adequate to the nature and circumstances of the case. In every instance of a repetition of the offence, after a previous conviction and discharge, the session judge may further, at his discretion, sentence the offender to receive corporal punishment [now commutable to 2 years' additional imprisonment]. If a person twice convicted and discharged be again found guilty of any of the offences above specified, and the session judge is of opinion that he ought to be imprisoned for a longer period than seven years, he is to refer the trial,* with his sentiments, for the sentence of the nizamut adawlut, in pursuance of cl. 7, sect. 2, Reg. LIII. 1803. Reg. XVII. 1817, sect. 10, cls. 1 and 2.

* *But the judge may refer any case, in which he considers the sentence within his competence inadequate. See para. 1285.*

4573. A charge of uttering a forged document must contain an averment of fraud. Reports *W. P.* 1853, part 2, page 1172.

Charge of uttering must include fraud.

4574. The attempt to register a forged bond in the office of register of deeds was held to be punishable as an uttering, or issuing and publishing. Reports *L. P.* 1855, part 2, page 322.

To register a forged deed is to utter it.

4575. When a person causes his agent to file a forged document in court, he is himself guilty of uttering it. Reports *W. P.* 1855, part 1, page 712.

To file by an agent is uttering.

4576. The giving by A to his own pleader, for the purpose of being filed in court, a document found afterwards to be forged, which the pleader, however, from suspicion of forgery, did not file, but returned to A, and which A did not further endeavour to use, is not an uttering or attempting to utter, or give effect to, a forged document, within the penalty of the law. The case would be different if the pleader, though innocently on his own part, had filed in court the document so given to him; or if A had given the document to the pleader, and solicited or incited him to file it, with a knowledge on his (the pleader's) part of its being a forgery. Reports *L. P.* 1851, page 1659.

The uttering is not complete by giving the forged document to an agent until a fraudulent use has been made or attempted to be made of it by the agent.

4577. Knowingly to file a forged document before the court of wards is an utterance of the forged document under these provisions. And the collector, as the legally constituted agent of the court of wards is competent to prosecute on the part of that court. Reports *L. P.* 1852, part 2, page 424.

To file a forged document before the court of wards is to utter it.

4578. Measurement papers must be considered as coming within the denomination of "deeds and papers," referred to in the above provision. Const. No. 1061.

The above applies to measurement papers.

4579. As the above provision prescribes no minimum of punishment for the offence of uttering forgeries, the judge being competent to pass any sentence he considers proper not exceeding seven years, a reference for mitigation is unnecessary. N. A. R. vol. 2, page 244. Reports *L. P.* 1852, part 2, page 330.

No minimum of punishment is prescribed in the above provision.

Precedents.

4580. A prisoner, convicted of forging a kabalah and receipt and producing them in court, was sentenced to imprisonment for 7 years; four others, convicted of aiding and abetting in the forgery and of perjury in attesting by their signatures the forged kabalah, to imprisonment for 5 years; and three others, convicted of privity to the forgery and altering a pottah, to imprisonment for 3 years. N. A. R. vol. 4, page 112. A prisoner, convicted

Cases of forgery—

of a kabalah and receipt;

of hoondees : on strong presumption of forging four hoondees, and of fraudulently selling them and appropriating the price of them to his own use, was sentenced to tusheer, godna (a), stripes, and imprisonment with hard labour for 7 years. N. A. R. vol. 1, page 339. Two prisoners

of bonds ; convicted of forging five bonds for the purchase of crops were sentenced to tusheer and imprisonment for 4 years. N. A. R. vol. 4, page 114. Where the prisoner held the bond of a person, to whom he had lent a sum of money, on plain paper bearing interest at 24 per cent. per annum; and after the death of that person forged and filed a bond written on stamped paper for the same amount, and bearing the date of the original, but fixing the interest "at the rate allowed by government," he was convicted of forgery, and the court refused to mitigate the sentence of imprisonment for 3 years passed on him by the judge

of a false vakalutnamah ; of circuit. N. A. R. vol. 2, page 95. A prisoner a plaintiff in a suit in a moonsiff's court convicted of causing to be forged, and another a vakeel of the court of forging, the names of three witnesses on a vakalutnamah; and both of causing the said vakalutnamah with the forged names of the three witnesses to be filed in the civil court with a view to obtain a decree for certain landed property by a pretended admission on the part of the defendant of the justice of the plaintiff's claim; were sentenced each to imprisonment for 4 years with labor in irons: the vakeel had already been sentenced in another case for issuing forged

of a false ikbal-dawa ; stampt paper to 2 years' imprisonment. N. A. R. vol. 5, page 105. So, three prisoners, convicted of having caused a forged ikbal-dawa, or acknowledgment of a claim, to be drawn up and filed in court, and of having fraudulently caused the same to be falsely attested, were sentenced to imprisonment for 4 years. N. A. R. vol. 3, page 93. A prisoner con-

of pension receipts. victed of forging receipts during four years for the pension of a deceased person by affixing thereto the seal of the deceased, and another prisoner his servant convicted of uttering the forged receipts by presenting them and receiving the money, were sentenced to imprisonment for 3 years. N. A. R. vol. 2, page 244.

Cases of fraudulent and injurious alterations— of vouchers ; 4581. A mohurir of an indigo factory, convicted of forgery in having altered certain vouchers of payments in order to defraud his employer, was sentenced to tusheer and imprisonment for 7 years. N. A. R. vol. 1, page 365. The prisoners altered a common

of a receipt for rent ; receipt for rent so as to make it appear like a receipt for money due under a decree of court, and filed it in court in reply to an application from the person who gave the receipt for the enforcement of a summary decree, which he had previously obtained against them: both prisoners were sentenced, one for the forgery, and the other for the uttering it,

of a petition presented in a public office praying for copies of certain papers ; to imprisonment for 7 years. N. A. R. vol. 2, page 210. A petition presented to a collector by a party praying for copies of certain papers, was made over to the prisoner, the copyist of the office, for the purpose of transcribing the copies: the prisoner made an addition to the list of documents by inserting one, of which he wished to obtain a copy for himself, his object in so doing being apparently to save the price of the stampt paper on which would have had to petition the collector for the copy: this was held to be forgery, and

(a) The punishment of godna was awarded under cl. 1, sect. 3, Reg. II. 1807 ; but this is rescinded by cl. 1, sect. 12, Reg. XVII 1817. And tusheer was abolished by Act II. 1849.

he was sentenced to imprisonment for one year. N. A. R. vol. 5, page 174. The agent of a dak-contractor was convicted of opening the government dak wallet, after it had been despatched from the post-office, and extracting the telegraph, and altering the hour of arrival and despatch of the government mail with a view to defraud the government: the session judge passed sentence of two years' imprisonment with labor in irons; but the nizamut adawlut held that the crime established amounted to forgery, and directed him to pass the minimum sentence prescribed by cl. 2, sect. 9, Reg. XVII. 1817, and to refer the trial for the court's order should he think that punishment too severe. Const. No. 1099. A mohurir of a police thana, with a view to screen himself from the charge of having deputed a burkundaz only to enquire into a case of theft, falsified the magistrate's record to make it appear that the jemadar had been deputed in another case; this was held to be forgery, but of the lightest description, and the prisoner was sentenced to 6 months' imprisonment. N. A. R. vol. 2, page 99. The mohurir of a register's office convicted of altering the endorsement of a deed brought for registry, in order to screen himself from a charge of extortion for refusing to return the deed unless a fee of ten rupees were paid, was sentenced to imprisonment for 3 years, the court refusing to adopt the recommendation from the judge for mitigation of punishment. N. A. R. vol. 6, page 251. But where a mohurir in the office of a principal sudder ameen altered the date of an order, directing the issue of a sale-notice, with the intent only of screening himself from punishment for neglect of duty, he was acquitted on a charge of forgery on the ground that the alteration although fraudulent could not be injurious to any one. Reports *L. P.* 1857, part 1, page 453.

of a dak telegraph;

of a public record;

of the endorsement of a deed brought for registry by the mohurir, to screen himself from charge of extortion;

of an order directing issue of sale notice by a mohurir of a civil court to screen himself from punishment for negligence.

4582. A putwaree convicted of forgery in furnishing a mutilated return of the village accounts by omitting to enter therein 1200 beegahs of lakhiraj land, under sect. 27, Reg. XII. 1817, was sentenced to imprisonment for 3 years, without labor and irons. N. A. R. vol. 5, page 113.

Putwaree furnishing mutilated accounts.

4583. A prisoner convicted of issuing forged parwanas, knowing them to be such, and thereby fraudulently obtaining as the authorized tulubana and appropriating various sums of money, was sentenced to stripes and imprisonment for 7 years with labor: the prisoner had on a former occasion been sentenced to five years' imprisonment for a similar offence. N. A. R. vol. 4, page 83. Where the prisoners were convicted of having forged endorsements for tulubana on parwanas which they were directed to serve on certain parties, and of having thereby extorted unauthorized tulubana, they were sentenced to imprisonment for 4 years with hard labor. N. A. R. vol. 3, page 303. The nazir of the special deputy collector's office was convicted of issuing a forged roobakaree, knowing the same to be false and fabricated, and thereby fraudulently obtaining 356 rupees from the collector's treasury, with intent to defraud government, and was sentenced to imprisonment for 5 years. N. A. R. vol. 5, page 193. A prisoner convicted of having issued a forged note, purporting to be a draft drawn by the collector of Juanpore in favor of the prisoner on the collector of Benares for 4,700 rupees, knowing it to be forged, was

Cases of knowingly and fraudulently uttering—fabricated parwanas;

false endorsements on parwanas:

forged roobakaree applying for money;

forged draft for money;

sentenced to imprisonment for 5 years. N. A. R. vol. 2, page 111. Where the prisoner filed a deed of sale which was a palpable forgery, having been executed very clumsily, it was held that the mere fact of filing it by the person interested in establishing its contents affords sufficient presumption that he uttered it knowing it to be forged; and he was sentenced to imprisonment for 2 years with labor. N. A. R. vol. 2, page 454.

forged deed of sale,

decree fraudulently altered,

In order to obtain the more ready enforcement of a decree, the date was altered in seven different places from 1824 to 1825, and it was so presented in court with a petition for its execution; the decree-holder, his mokhtar, and his vakeel, who filed the document, were convicted of fraudulently attempting to give effect to a falsified instrument, knowing it to be such, and were sentenced to imprisonment for 2 years without labor and irons. N. A. R. vol. 3, page 28. A prisoner convicted of filing in a civil suit a forged receipt for money paid, knowing it to be such, and of subornation of perjury in producing a person to swear to the authenticity of the said receipt, was sentenced to imprisonment for 3 years with labor. N. A. R. vol. 4, page 56. Three prisoners, convicted of fraudulently issuing and publishing as true (by filing it in court) a forged receipt for money paid, knowing the same to be false and fabricated, were sentenced each to imprisonment for 4 years, and a fine of 50 rupees each in lieu of labor. N. A. R. vol. 5, page 181. Where the prisoner gave a receipt in a fictitious name for money received by him from a government treasury, he was sentenced to imprisonment for 6 months without labor or irons. N. A. R. vol. 5, page 59. A prisoner was convicted of having personated a dewanny chaprasi, and of having with others arrested the prosecutor by means of a forged summons; this was held to be forgery, and he was sentenced to imprisonment for 3 years. N. A. R. vol. 2, page 354.

forged receipt for money paid,

forged summons,

Attempting to give effect to a forged note.

4584. A prisoner convicted of having with him a forged note, and of having fraudulently carried it to the prosecutor with a view to obtain and embezzle money, was sentenced to imprisonment for three years. N. A. R. vol. 2, page 483.

Procuring forged signature.

4585. A prisoner convicted of having knowingly allowed a person to affix a fictitious signature to a kabuliyat, and of having concealed his knowledge thereof for his own purposes, which afforded strong presumption that he willingly and knowingly caused the forgery of the signature to the kabuliyat, was sentenced to 3 years' imprisonment with labor and irons. N. A. R. vol. 6, page 3.

Vakeel dismissed on suspicion of having presented a forged deed, and of subornation of perjury in support of it.

4586. An authorized pleader of the civil court, though acquitted from want of positive evidence of the charge of forging a document and presenting it to the court, knowing it to be forged, was dismissed from office in consequence of suspicion arising from his having presented a forged deed and bringing forward false witnesses in support of it. N. A. R. vol. 1, page 293.

NOTE.

In English law the offence of forgery is defined by Blackstone to be "the fraudulent making or alteration of a writing to the prejudice of another man's right;" and by East to be "a false making, a making *malo animo* of a written instrument for the purpose of fraud and deceit. But it is not necessary to the sustaining an indictment of

forgery at common law, that any prejudice should in fact have happened by reason of the fraud; it is sufficient if it might have happened: nor is it necessary that there should be any publication of the forged instrument. The most usual kind of forgery is, where the party assumes the name and character of a person actually in existence, and by means of the credit attached thereto carries his fraud into effect: but the adoption of a false *description* and *addition*, where a false name is not assumed, and there is no person answering the description, has been held not to be forgery. A man may be guilty of forgery by the fraudulent making of an instrument, though in his own name; as if he makes a feoffment of lands to J. S., and afterwards a deed of feoffment of the same lands to J. D. of a date prior to that of the feoffment to J. S. So, if a bill of exchange, payable to A. B. or order, come to the hands of another person named A. B., not the payee, who fraudulently indorses it for the purpose of obtaining the money, this is a forgery. Making an instrument in a fictitious name, or the name of a non-existing person, is equally forgery, as making it in the name of an existing person: and it is not necessary, in order to render the act forgery, that the party should gain any additional credit by the fictitious name. The circumstance that the party making the forged instrument has assumed, and been known by the fictitious name in which it is executed, for some time before the making, will not prevent its being a forgery; there being no distinction whether the credit was given to the person of the prisoner, or the name assumed by him; but there must be a fraudulent intent in the particular transaction. It is not material whether the forged instrument be made in such a way, as, were it true, it would be of validity, or not; but then the false instrument must carry on the face of it the semblance of that which is counterfeited, and must not be illegal in its very frame. So, the false making of a will is forgery, although the supposed testator be alive. So a man may be convicted of forging an unstamped instrument, though such instrument can have no operation in law. It is not essential that the forged instrument should in all respects bear an exact resemblance to the real instrument which it purports to be; it is sufficient if it bear a substantial resemblance, such as is calculated to deceive when ordinary and usual observation is given: but it is necessary that the forged instrument should in all essential parts bear upon the face of it the similitude of a true one, so that it be not radically defective and illegal in the very frame of it.—As regards the proof, it is seldom that direct evidence can be given of the act of forgery. In the case of negotiable securities, the evidence is usually applied to the uttering rather than to the forging, although both are usually charged. Where the instrument is not of a negotiable nature, as in the case of a bond or will, after proof that it has been forged by some one, a strong presumption necessarily arises against the party in whose favor the forgery is made, or who has the possession of it, and seeks to derive benefit from it. Evidence that the forged instrument is in the hand-writing of the prisoner, must, if unexplained, be necessarily strong evidence of his guilt. An intent to defraud is an essential ingredient to constitute the offence of forgery. The intent is mostly evidenced by the act itself, which, from its nature, leaves in general no room for doubt upon the point. The inference is frequently confirmed by the conduct and behaviour of the guilty party in the artifices and falsehoods which he employs for the purpose of effecting his object, or of avoiding detection. The subsequent uttering or publication of the forged instrument is admissible, and strong evidence to prove the original design of forging the instrument; and whether the making or uttering of a forged instrument be done with an intent to injure a particular person as alleged, is matter of evidence for a jury. If several combine to forge an instrument, and each execute by himself a distinct part of the forgery, and they are not together when the instrument is completed, they are nevertheless all guilty as principals: as, if B make the paper, C engrave the plate, and D fill up the instrument, each without knowing that the others are employed for that purpose, they are all principals. So, if several concur in employing another to make a forged instrument, knowing its nature, they are all guilty of the forgery. *Roscoe's Digest.*

BOOK VIII.

OF SPECIAL RULES REGARDING PARTICULAR CLASSES OF PERSONS.

CHAPTER I.

OF EUROPEAN BRITISH SUBJECTS.

Amenability. Descent.

4587. The parents of an individual being Europeans, he must be considered to be an European, without reference to the place of his birth. Const. No. 397.

Illegitimate children are classed with their mother.

4588. Illegitimate children should be classed with their mothers; and must be considered British subjects, European foreigners, or Americans, according as their mothers may respectively be British, foreign European, or American. Thus, the illegitimate son of an European British subject by a native mother can be tried by the local criminal courts on a charge of adultery: but a married woman, the legitimate child of a British father, is not amenable to the local courts on a similar charge preferred against her by her husband. Const. Nos. 806 and 978.

How far the privileges extend in the direct descent of legitimate children.

4589. B, as the son born in wedlock of A, who was the son born in wedlock in British India of a European British subject, is clearly a British subject within the meaning of the charter of, and Acts relating to, the supreme court; and is not amenable to the jurisdiction of the mofussil criminal court. The circumstance that A's mother was an Armenian, and that B's mother was not a European British subject, makes no difference in this respect. These privileges certainly attach to the sons and grandsons: whether they extend further is an open question; but it seems that in respect of all persons descended legitimately from a male European British subject, and born in British India subsequently to the vesting of the sovereignty in the crown (*i. e.* from the beginning of the century) there is no limit, in point of degree of descent, to the rights of such persons to claim the privileges of British subjects. Opinion of Advocate General in C. O. No. 2, March 17, 1859.

Example in a special case.

4590. In the case of a prisoner who alleged that his father was a German, and his mother a Scotchwoman, and that he was born at Madras, the advocate general gave it as his opinion that he must be considered a British subject amenable to the jurisdiction of the supreme court. But this opinion seems to require modification, especially as regards the mixed progeny of Europeans and natives; and cannot be considered as an established rule, since the nizamut adawlut objected to the doctrine, and held the prisoner amenable to the local courts on a ground which left the question still open. N. A. R. vol. 2, page 111.

Courts are to satisfy themselves as to their jurisdiction.

4591. The criminal courts are not to proceed to try and sentence a person, whom they may themselves have fair reason from any cause to regard as probably not subject to their jurisdiction, without making all practicable inquiry to satisfy themselves on the point. C. O. No. 33 of vol. 4.(a) If the magistrate know that the prisoner is a European British subject, it is his duty, whether the prisoner claims exemption or not, to abstain from further proceedings against him as a magistrate. If, without any actual knowledge on the subject, the magistrate have reason to suppose that the prisoner is such a British subject, it is the magistrate's duty to ascertain from him, whether he alleges or denies that he is one; and, if he alleges that he is, to give him every facility, by allowing time and otherwise, for proving that he is, the burden of such proof being on him. A magistrate will not be justified, if he has reason to suppose that the prisoner is a European British subject, in proceeding against him as if he were not one, without first giving him a distinct opportunity of pleading that he is one. If he do not so plead, or be not able, upon time being allowed him for that purpose, to adduce any satisfactory proof of his being a European British subject, the magistrate will be quite warranted in proceeding against him. If he do so plead, and give proof or produce documents, which, although not amounting to full legal proof of his status, satisfy the court that he is really a European British subject, the magistrate should, without putting the prisoner fully to complete his proof by strict legal evidence, take up the case as a justice of the peace, and send it up to the supreme court, taking care to record distinctly the statement made by the prisoner that he is a British subject of lawful European descent. Opinion of Advocate General in C. O. No. 2, March 17, 1859.

But in the supreme court the proof of jurisdiction lies with the prosecutor.

4592. In the event of its being found necessary to commit an European British subject for trial before the supreme court, it is necessary for the convicton of such person that there be direct proof of his amenability to that court. The mode of proof consists in the evidence of a credible person, who knows the accused, and his place of birth, or who has heard him declare of what country he is. C. O. 197 of vol. 3.

Persons resident in India liable to what courts.

4593. The servants of the government, as all other of her majesty's subjects resident in India, are amenable to the courts of oyer and terminer and jail delivery and courts of general or quarter sessions of the peace in any of the British settlements in India, for all murders, felonies, homicides, manslaughters, burglaries, rapes of women, perjuries, confederacies, riots, routs, retainings, oppressions, trespasses, wrongs, and other misdemeanors, offences, and injuries whatsoever by them done, committed, or perpetrated, in any of the countries or parts of Asia, Africa, or America, beyond the Cape of Good Hope to the Straits of Magellan, within the limits of the exclusive trade of the East India company, whether the same be done, committed, or perpetrated against any of her majesty's subjects, or against any other person or persons whatever. 26 Geo. III. cap. 57, sect. 29.

(a) This circular is founded on the judgement of the supreme court in the case of V. Foy, which is given at length; but it seems unnecessary to quote it here, since the rule laid down by the Advocate General, as given in the text, is more clear and useful.

Europeans not British subjects are liable to the local courts;—if British subjects, to the supreme court.

4594. All Europeans, not British subjects, are amenable to the authority of the magistrates and sessions courts within whose jurisdictions they are apprehended and brought to trial, in common with the natives of the country. But European British subjects, for all acts of a criminal nature, are amenable only to the supreme court of judicature at Fort William; and in the event of any charges being preferred against them, which may render them liable to a criminal prosecution in that court, the process detailed below is to be observed for their apprehension and trial. *Beng. and Ben.* Reg. II. 1796, sect. 2, cl. 1. *Ced. Prov.* Reg. VI. 1803, sect. 19, cl. 1.

European British subjects are not penally liable to the local courts.

4595. European British subjects have not by any Act of the legislature been made amenable to the local authorities in the administration of the penal enactments of the government of India. Const. No. 1296. Except in certain special cases; see *infra*; and several of the later Acts have been made applicable to them, as *e. g. paras.* 306, 3302, 3339, &c.

Offences committed in foreign territories are punishable by all courts of competent jurisdiction.

4596. All her majesty's subjects, as well servants of the government as others, are amenable to all courts of justice, both in India and Great Britain, of competent jurisdiction to try offences committed in India, for all acts, injuries, wrongs, oppressions, trespasses, misdemeanors, offences, and crimes whatever, by them or any of them done or committed in any of the lands or territories of any native prince or state, or against their persons or properties, or the persons or properties of any of their subjects or people, in the same manner as if the same had been done or committed within the territories directly subject to and under the British government in India. 33 Geo. III. cap. 52, sect. 67.

No person exempt from public duties, or public charges, or assessments, by reason of birth or descent;

4597. No person whatever, being the owner, holder, or farmer of any property in land, or in any emoluments issuing out of land, in any part of the territories under the British government, whether in perpetuity or for a term, or being a local agent or manager of any such property, is, by reason of his place of birth, or by reason of his descent, exempt from any public charge or assessment, or from any duty connected with the police, or with the salt or opium revenue, or from any duty whatsoever of a public nature, to which he would otherwise be subject, as the owner or holder of such property, or as a local agent or manager thereof. Act II. 1853, sect. 1.

but subject in such respects to the same laws as a native.

4598. For the non-payment of any such public charge or assessment, or for the breach of any such duty as aforesaid, or for any neglect or misconduct in the discharge thereof, every person, whatever may have been his place of birth, or his descent, shall be subject to the same laws, regulations, and procedure, and to the same jurisdictions, as if he were a native of the said territories. Act II. 1853, sect. 2.

Magistrate may enforce attendance of European British subject to give evidence.

4599. A British subject resident in the mofussil is not exempted from appearing as a witness in a criminal case pending in the local courts; and the magistrate has full power to summon such British subject, who ought to obey such summons and attend. It follows that the magistrate may enforce the attendance of such British subjects, as he would enforce the attendance of any other witness. In summoning a British subject and in enforcing obedience to such summons the magistrate should be guided by the law of procedure

in his own court, which is equally applicable to all persons summoned by him as witnesses; and he may therefore, if he thinks fit, and the evidence of the witness is material, proceed under sect. 6, Reg. IV. 1973 [*scil.* sect 2, Reg. L. 1803, *see para.* 439] and seize the witness and bring him before his court. But a mofussil magistrate has no power to punish such witness if he refuses to give evidence when brought before him; for, although the British subject has no privilege exempting him from appearing as a witness in the local courts, yet he has a privilege exempting him from punishment by a mofussil court except in certain cases, and this is not one of such cases. If such a case should arise, he might be indicted in the supreme court for an obstruction of justice. It seems that an indictment will lie, when the court, whose process is disobeyed, has no power to attach*; and the supreme court is bound to take judicial cognizance of the existence of the mofussil criminal courts, and is therefore bound to punish an offence committed by a British subject which is an obstruction of justice in such courts. As regards the expenses of witnesses, mofussil magistrates should be guided by the rules and procedure of their own courts; but, if the witness be poor and refuse to attend, the tender of his expenses would probably be necessary to secure his conviction in the supreme court. The attendance of witnesses resident in Calcutta should be compelled by warrant regularly endorsed by one of the judges of the supreme court under Act XXIII. 1840. Opinion of Advocate General in C. O. No. 100 of vol. 4.

But if he refuses to give evidence, he must be committed to the supreme court.

* *Russell, on crimes and misdemeanors*, 497, *note* 2.

If the witness resides in Calcutta.

Duties of magistrate and justice.

4600. If any offence, which by any Act of the governor general in council heretofore passed is declared to be punishable upon conviction by a magistrate, shall be committed by a European British subject beyond the local limits of the jurisdiction of her majesty's supreme courts of judicature, the offender, if not otherwise punishable, shall be liable, upon conviction before one of the said supreme courts of judicature, to the punishment to which by such Act the offender is declared to be liable upon conviction before a magistrate. Act XVIII. 1859, sect. 1.

British subjects how punishable for offences which are by law made punishable in the mofussil upon conviction by a magistrate.

4601. If any offence, which by any Act of the governor general in council heretofore passed is declared to be punishable upon conviction by a magistrate, shall be committed by any person within the local limits of the jurisdiction of any court of judicature established by royal charter, the offender, if not otherwise punishable, shall be liable upon conviction before such court to the punishment to which by such Act the offender is declared to be liable upon conviction before a magistrate. Act XVIII. 1859, sect. 2.

Offenders how punishable, when such offences are committed within the local limits of the jurisdiction of Her Majesty's courts.

4602. Nothing in this Act shall extend to any case in which jurisdiction is expressly given to a justice of the peace to convict the offender. Act XVIII. 1859, sect. 3.

Jurisdiction expressly given to justice of the peace not to be affected.

4603. Whenever in any Act heretofore passed by the governor general in council the word "magistrate" is declared to include a justice of the peace, such justice of the peace shall not by virtue of such Act be deemed to have jurisdiction to punish any offence unless the same shall be committed within the local limits of the jurisdiction of any of the courts of judicature established by royal charter. Act XVIII. 1859, sect. 4.

Construction of the word "magistrate" in certain Acts.

Course to be adopted, whenever a European British subject, residing in the interior of the country, is guilty of any act of illegal violence, injustice, or oppression, towards the natives, in the prosecution of indigo, or other commercial transactions.

4604. The nizamut adawlut are to bring under the special notice of government every case in which, from the proceedings or information before them, they are satisfied that a European British subject, residing in the interior of the country, has been guilty of any act of illegal violence, oppression, or injustice towards the natives in the prosecution of indigo or other commercial transactions. And whenever such British subject appears to a magistrate, on satisfactory evidence, to have been guilty of any illegal act of the above description, and the proceedings held in the case are not referrible in regular course to the nizamut adawlut, he is to transmit a specific report of the facts of the case, with a copy of his proceedings, to that court; who, if they consider the alleged act of illegal violence or oppression to be proved, and to be of a nature demanding the notice of government, are to report their sentiments accordingly.(a) C. O. No. 289 of vol. 1.

Report to be made to the commissioner of circuit of aggravated affray, in which the servants of an indigo factory are engaged.

4605. Magistrates are to submit to the commissioners of circuit, for their examination, every case of violent affray, attended with aggravating circumstances, in which the servants of an indigo factory are engaged, whether the European at the head of the establishment has been included in the charge or not: and the commissioner of circuit is to furnish with his annual report, in his capacity of superintendent of police, a specific statement of such cases. C. O No. 22 of vol. 2.

Magistrate how to proceed when natives are charged with offences in concert with European British subjects:

4606. Magistrates are to refrain from trying themselves, or committing for trial before the sessions court, natives charged with or suspected of being concerned with European British subjects in the commission of offences, until they have made a reference to the nizamut adawlut, and have been furnished with instructions for their guidance in the case. But the trial of a native is not vitiated under this order, if the name of an European is only indirectly introduced in the transaction for which the commitment is made: the European must be charged with the offence, or so far implicated as to warrant his commitment. C. O. No. 79 of vol. 1. N. A. R. vol. 2, page 73.

this order does not refer to the preliminary enquiry.

4607. The above order does not require the magistrate to apply for instructions in regard to the preliminary enquiry; it is only when the result of that enquiry leads to the commitment of the European, that the application becomes necessary. Letter of Nizamut Adawlut, August 12, 1836, in Mr. Cheap's edition of the Circular Orders.

Magistrate, who is qualified to act as justice of the peace, how to proceed when a charge is preferred before him against an European British subject, for an offence not within his competence as a magistrate or as a justice of the peace.

4608. If the magistrate before whom a charge is preferred against any European British subject, has taken the oaths of qualification as a justice of the peace, and thereby has become vested with the full power and authority of a justice of the peace, under the provision made for that purpose by the Act of 21 George III. cap. 65; the magistrate, upon the charge or information being lodged before him upon oath, is to proceed to the apprehension of the party accused; and, provided the evidence against him be sufficient to warrant the same, to his commitment for trial [or admission to bail], as he is authorized and required to do by virtue of his commission as justice of the peace; and if there appear to

(a) This rule is obsolete; it was issued at a time when European British subjects could not hold land in the mofussil, and when they were liable to be deported by order of government.

him sufficient grounds for committing such British subject for trial, he is to issue a warrant under his signature and official seal, directed to the sheriff of Calcutta, and commanding him to receive the prisoner into his custody for trial at the ensuing sessions; he is likewise to bind over the prosecutor to repair to Calcutta before the session next ensuing, and is to take recognizances from the witnesses for their appearance at the trial. *Beng. and Ben.* Reg. II. 1796, sect. 2, cl. 2. *Ced. Prov.* Reg. VI. 1803, sect. 19, cl. 2.

If he holds to bail or commits, the papers are to be transmitted to the clerk of the crown.

4609. Whenever a magistrate who has taken the oaths of qualification as a justice of the peace, holds any European British subject to bail, or deems it necessary to commit any such person to the jail of Calcutta, to take his trial before the supreme court of judicature for any offence of a criminal nature; the magistrate is to transmit the original depositions taken on the occasion (together with translations of any papers not being in the English language) to the clerk of the crown. Reg. XV. 1806, sect. 2, as amended by Act XXII. 1854.

Original vernacular proceedings with English translation to be sent to the supreme court.

4610. When depositions are taken in the mofussil before one of her majesty's justices of the peace, the correct as well as the convenient course is for the justice of the peace to send them in the native character and also in the English language, the language of the court, and to sign both with a statement in English to the effect that they are taken before him as a justice of the peace.(*a*) Letter from the Clerk of the Crown to Magistrate of 24 Pergunnahs, December 2nd, 1852.

Magistrate, not qualified as justice of the peace, how to proceed on receiving charge against such person, if the offence charged is not bailable;

4611. Whenever a European British subject is charged on oath before a magistrate, who has not taken the oaths of qualification as a justice of the peace, with a criminal offence which according to the law of England is not bailable, the magistrate is to make a summary inquiry into the circumstances of the charge without delay; and if, after making such inquiry, he is of opinion, that there are grounds for bringing the person accused to trial before the supreme court of judicature, he is to send the person accused under safe custody to her majesty's justices of the peace at the police office in Calcutta, accompanied by the witnesses against the prisoner, with a letter, stating the nature of the case, requesting that the justices at Calcutta will take the necessary measures for bringing the person accused to trial before the supreme court of judicature. The magistrate, by whom the prisoner is sent to Calcutta, is at the same time to transmit a copy of all the proceedings held on the occasion (together with translations of any papers not being in the English

(*a*) This was written by desire of the chief justice in reply to the following remarks offered by the magistrate in regard to certain translations of depositions made by the interpreters of the supreme court. "One absurd mistake runs through the whole, and renders the depositions nearly unintelligible. There being no system of punctuation in Hindostanee or Bengalee, it is usual at the close of a sentence to insert in the former language the word "fukut," and in the latter "itee," to show that the sentence is finished. The words are most correctly represented in an English translation by a full stop; but your interpreter has thought proper in every sentence to translate them respectively into the English words "only" and "thus far." It is hardly worth while perhaps noticing his translation of the word "huzoor," as it has always been a favorite one with the interpreters of the supreme court. I may remark however that it is just as correct to translate "huzoor" "the presence," as it would be in interpreting from English into Hindostanee to translate "your worship" "tumhara pooja," or "your honor" "tumhara izzut." The equivalent in English for the term of respect "huzoor" is "his worship" or "his honor."

language) to the secretary to government, to enable the government to determine whether the prosecution should be undertaken by the law officers of government, and at the public expense, or otherwise. *Beng. and Ben.* Reg. II. 1796, sect. 2, cl. 3. *Ced. Prov.* Reg. VI. 1803, sect. 19, cl. 3. Reg. XV. 1806, sect. 3.

and how to proceed, if the offence charged is bailable.

4612. Whenever any person charges a European British subject before a magistrate, who has not taken the oaths of qualification as a justice of the peace, with a bailable offence, it is the duty of the magistrate to explain to the complainant the course which he should pursue for the purpose of obtaining redress, that is, by application to the justices of peace at Calcutta or to the grand jury. It is likewise the duty of the magistrate, after calling upon the person accused for his reply to the complaint, to report the case to government; at the same time stating, on a consideration of the distance at which the parties reside from the presidency, of the poverty of the complainant, or of other circumstances, whether it would in the opinion of the magistrate be proper, that the expense of the prosecution should be defrayed by government. The government, on receipt of such report, will pass such orders on the subject as appear advisable; and will at the same time direct, in cases which appear to require it, that the prosecution shall be conducted by the law officers of the government. Reg. XV. 1806, sect. 5.

Diet money may be advanced to the prosecutor and witnesses if they are indigent.
* *v. para.* 474.

4613. In all cases of inability of the prosecutor or witnesses to defray the charge of the journey to Calcutta, the magistrate is authorized to make them the same allowance as by sect. 26, Reg. IX. 1793,* he is authorized to make to prosecutors and witnesses in need of such assistance during their attendance on the sessions courts, viz., a daily allowance of two anas each during their attendance on the supreme court, including the actual period of their journey to and from Calcutta; or sufficient time for their return after their discharge from the court, in cases wherein it appears that they have voluntarily protracted their return beyond what was necessary. *Beng. and Ben.* Reg. II. 1796, sect. 3. *Ced. Prov.* Reg. VI. 1803, sect. 19, cl. 4.

These provisions do not refer to petty cases not warranting commitment.

4614. Complaints of petty criminal offences against British subjects, such as do not warrant commitment for trial before the supreme court, were not meant to be included in the above provisions, when the magistrate is not qualified to act as a justice of the peace. Const. No. 20.

In case of commitment the depositions are to be forwarded to the solicitor to government.

4615. In all cases where Europeans in the districts are charged with offences, for which they will be tried in the supreme court, the magistrate is, if time will admit of it, to forward the depositions to the solicitor to government in order that he may receive the advice and suggestions of that officer on the evidence which is to be adduced at the trial. C. O No. 34 of vol. 3

Forms.

4616. The forms of warrants, recognizances, &c. in use by her majesty's justices of the peace, given in appendix A, Nos. 60 to 68, were prepared by the solicitor to government. C. O. Sup. Pol. L. P. No. 27 of 1844. Other useful forms have been supplied.

Rules regarding the examination of European British subjects.

4617. European British subjects brought before the magisterial authorities for any alleged offence, should not be interrogated upon the matters charged against them, but should merely be asked if they wish to make a statement in regard to the charge, and at the same time warned that whatever they may say will be made use of against them. After such question and warning, the statements made by the accused are to be taken down; and the following form of examination is to be made use of:—"The examination of A. B., of——, indigo-planter, taken by me, J. P. Esquire, magistrate of——and one of her majesty's justices of the peace, the——day of—185—: the said examinant being charged on the solemn affirmation of C. D. of——, with having (*here state the charge*) and being duly cautioned, saith———. Taken before me the day and year first above mentioned, J. P." (*a*) C. O. No. 199 of vol. 3.

Such persons may file English translations of their vernacular pleadings.

4618. A European defendant filing his pleadings and petitions in the vernacular language on the prescribed stamp, may be permitted to add translations thereof in English on unstampt paper; and all processes issued to him should be written in the ordinary language of the court and in English. It is not the duty of the court to furnish the defendant with translations; he must procure a person duly qualified to interpret for him. The deposition of a European witness must be recorded in English [or, *semble*, in the language in which it is delivered: *see para.* 515]. Const. No. 1035.

Depositions of such persons should be taken in English.

Observations of the advocate general regarding the general duties of a justice of the peace.

4619. The following observations in regard to the duties of a justice of peace in this country were recorded by the advocate general in 1809:—"Whether persons holding the office of justice of peace are, or are not, authorized to exercise any specific power, or (which is the same thing) bound to discharge any specific duty, in this country, which belongs to

(*a*) The following rules, by which a justice of the peace should investigate a charge made before him, are extracted from Chitty's Burn's Justice, vol. 2, pages 464 *et seq.*—The first step in the investigation as to the offence is to call for and examine the witnesses for the accusers. The whole proceedings of the examination should be in the presence and hearing of the accused. The witness should be informed as to the purpose for which he is required to give evidence; or, in other words, that there is a person under charge against whom he is required to give evidence; otherwise the witness could not be punished for refusing to give evidence. Before administering the oath to the witness, the magistrate had better enquire who and what the witness is; and in some cases it would be as well shortly to ascertain what he intends to prove: it seems also that no witness ought to be examined who is not competent, according to the general rules of evidence, to give evidence. [For the rules regarding the incompetency of witnesses, see *paras.* 544 *et seq.*] After the competency of the witness is ascertained, he should be sworn; the following is the usual form of oath prescribed to be taken by a Christian: "*You shall true answer make to all such questions as shall be demanded of you; so help you God.*" The examination of the witness must be upon oath administered previous to the examination, or such examination will amount to nothing. If a magistrate committed a party without an oath made before him, he would be liable to an action if the prisoner were acquitted. Leading questions should not be proposed to a witness; nor irrelevant questions; nor questions which need not be answered. The witnesses should be examined before the accused, and he may cross-examine them. They should, especially if they appear unwilling, be examined separately; and no one who has already been completely examined should be permitted, if it be possible to avoid it, to inform any other who has yet to be examined to what particulars his evidence has extended: indeed, in most cases, it would be best and fairest to keep all the witnesses away but the one under examination. The answers to the examination, as they are given, should be immediately put into writing in a plain and intelligible manner, and as near as possible in the very words used by the witness. The examination, when put into writing, is usually read over, and tendered to the

Examination of accusers and witnesses.

the office of justice of the peace in England, must in every instance depend upon the question, whether that part of the English law, on which the given power or duty depends,

Examination of the accused :

witness for signature ; and he should sign it ; though he is not actually obliged to do so, as such signature is not absolutely necessary, but is only taken for precaution and facility of future proof. If the slightest case even of suspicion be made out against the accused, he should be asked by the justice if he has anything to say against the charge : he should not be put on his oath. A prisoner, when taken on suspicion before a magistrate, is to be allowed to speak voluntarily, and to give his account freely ; and he ought not to be pressed to answer, examined, or questioned by the magistrate like a common witness : where a person had been so examined, his account

his signature ;

was rejected as inadmissible, though nothing like a threat or promise had been used. The examination of the prisoner, when reduced into writing, ought to be read over to him, and tendered to him for his signature : it ought to be subscribed also by the magistrate ; the signature however of the prisoner is not essentially necessary, but only for precaution and for the facility of future proof. It has been held that a written examination containing the prisoner's confession, taken by a committing magistrate, and read over to the prisoner, who admitted it to be true, but refused to sign it, would have been evidence at common law : in this case the examination was rendered admissible by the prisoner acknowledging the truth of its contents ; but if the prisoner had not made such admission and had refused to sign it after it had been read over to him, it could not have been received in evidence. Whether he be silent or not, it is best that the justice should put down in writing the facts exactly as they take place before him ; and if he be silent, or declines saying anything in his behalf, the examination, after stating the offence with which the party is charged, as in the form [given in the text], should proceed thus : "*And the witnesses against the said A. B. being examined in his presence, the said A. B. is now asked by me if he wish to say anything in his own behalf ; whereupon the said A. B. answereth nothing, or saith*"—stating what the accused may say

his witnesses ;

as nearly as possible in the very words he uses. The accused may, if he choose, call witnesses, and they may be examined on oath, like the witnesses against him ; and their examination should be put into writing, like the rest.

If several offenders.

If more than one person be accused, each of them should be examined apart from the rest, in order that an opportunity may be afforded of detecting any variations in their story.

Deposition how to be taken.

The depositions should be taken down in writing in the very words used by the witness, or as nearly as possible in those words, and not in any law technicalities, or words not made use of by him. In almost all cases it would be infinitely better if the depositions were taken in the first person, and if, after the introductory part, which generally concludes with the words "who saith as follows," the deposition proceeded to state "I saw, &c. at such a time and place," instead of saying "he, this examinant" or "he, this deponent"—terms which many witnesses do not understand, and perhaps may conceive to mean some other person. Only so much as is material need be taken down. If the original information and evidence taken before the warrant was issued contain accomplete case, it is the practice after re-swearing the accuser and witnesses, to read over their former depositions in their presence and that of the prisoner, and then to state to the latter that he is at liberty to ask the prosecutor and witnesses any questions respecting the charge against him ; and, if he declines so doing, the examinations are not again gone over, but a fresh jurat is made to them ; and this even before a fresh magistrate. The papers are then to be signed by the parties deposing, and also by the justice before whom they are taken ; but these formalities are not absolutely requisite.

Recognizance to prosecute or give evidence.

When the justice has decided upon bailing or committing the accused, he should take the recognizance of the prosecutor to prosecute, as also the recognizance of the material witnesses to appear against the party accused. If more than one are to be bound to prosecute, the recognizances should not be taken separately. Where goods have been obtained by false pretences, the recognizance to prosecute should be in double the value of the goods. Infants and married women, who cannot legally bind themselves, must procure others to be bound for them ; infancy however is no ground for discharging a forfeited recognizance to appear and prosecute for a felony.

Refusing to give evidence.

If the prosecutor or witness refuse to give such recognizance the magistrate has power to commit him ; but a justice of the peace is not authorized by law to commit a witness willing to enter into a recognizance for his appearance to give evidence against an offender, merely because such witness is unable to find a surety to join him in such recognizance ; nor ought the justice to require such surety ; the party's own recognizance (at the peril of commitment) is all that ought to be required.

is or is not applicable in this country. There are some broad lines which might be laid down for determining this question in certain cases; but in many cases it is and must be matter of nice judicial discretion. As I see no practical use, but on the contrary a great deal of inconvenience, in attempting to describe generally what matters are and what are not cognizable by justices of the peace here, I beg to decline it. The cases of the most common occurrence are attended with no difficulty; and the course which the magistrates have to take in them is, or easily may be, well known. If any should occur, which are out of the ordinary routine, the easiest and safest way for the magistrate is to apply to the government for instructions, which may be always obtained without any great delay. And if the case should be such as not to admit of that delay (though I can hardly imagine such a case) the magistrate may, I am sure, confidently act for the best, refusing or granting his interference as he thinks most expedient for the purposes of justice and public convenience. If his intentions are upright, the law will hold him harmless of any personal consequences; and, speaking from my own experience, I have no doubt that the government would always think itself bound to defend him if attacked where his motives were unquestionable." (*a*) C. O. No. 59 of vol. 1.

Rules regarding the requisition and forfeiture of recognizances to keep the peace.

4620. When it appears necessary to a magistrate, in his capacity of justice of the peace, to take penal recognizances, he should consult the advocate general if in doubt as to the legality of the proceeding. And if he desires to enforce the forfeiture of such recognizances, he must transmit them to the clerk of the crown before the next ensuing sessions of the supreme court, as the only proceeding for the forfeiture is in that court. The recognizance should always distinctly specify the time for which it is to continue in force: but the amount of the penalty of such recognizances is not limited by the amount of penalty which a magistrate is authorized to levy from a European British subject under statute 53, George III. cap. 155, sect. 105. Govt. order, June 9, 1830. Const. Nos. 446 and 826.

Powers of magistrate.

Magistrate has jurisdiction in cases of assault, forcible entry, or other injury accompanied with force committed by European British subjects on natives of India

4621. Whereas his majesty's British subjects resident in the British territories in India, without the town of Calcutta, are now by law subject only to the jurisdiction of his majesty's court at Calcutta, and are exempted from the jurisdiction of the courts established by the Company within the said territories, to which all other persons whether natives or others, inhabitants in the said territories without the limits of Calcutta, are amenable: and whereas it is expedient to provide more effectual redress for the native inhabitants of the said territories, as well in the case of assault, forcible entry, or other injury accompanied with force, which is committed by British subjects at a distance from the place where his majesty's court is established, as in case of civil controversies with such British subjects;—it is therefore enacted, that it is lawful for any native of India, resident in the East Indies, or parts aforesaid, and without the town of Calcutta, in case of any

(*a*) The remainder of the opinion of the advocate general given in the above circular order refers to cases of forcible entry, which have since then been made cognizable by magistrates by the 53rd George III; and it is therefore useless now to quote it. It has been ruled that no English statute of a later period than 13th George I. is applicable to India, unless its extension is expressly declared therein See sect. 19, chap. 3, book 1, of the functions of a justice of the peace, page 178.

assault, forcible entry, or other injury accompanied with force, alleged to have been done against his person or property by a British subject, to complain of such assault, forcible entry, or other injury accompanied with force, not being felony, to the magistrate of the zillah or district where the alleged offender is resident, or in which such offence has been committed; and such magistrate has power and authority, at the instance of the person so complaining, to take cognizance of such complaint, to hear parties, to examine witnesses, and having taken in writing the substance of the complaint, defence, and evidence, to acquit or convict the person accused; and, in case of conviction, to inflict upon such person a suitable punishment by fine, not exceeding 500 rupees, to be levied in case of non-payment by warrant under the hand of the said magistrate, and upon any property of the party so convicted which may be found within the said district; and if no such property is found within the said district, then it is lawful for the said magistrate, by warrant also under his hand, to commit such offender to some place of confinement within the said zillah or district, which, in the judgment of the said magistrate, is fit for receiving such offender; or, if there is no fit place of confinement, then to the jail of the presidency, to remain there for a period not exceeding two months, unless such fine is sooner paid; and it is lawful for the said magistrate to award the whole or any portion of such fine to the party aggrieved, by way of satisfaction for such injury. Provided always, that all such convictions are removable by writ of *certiorari* into the said court of oyer and terminer and jail delivery, in the same manner, and upon the same terms and conditions, and are to be proceeded upon in the same manner in every respect as is directed in the Act of the thirty-third year of his majesty's reign, with regard to other convictions before justices of peace* in the British settlements or territories in India: provided also, that nothing herein contained is to extend, or to be construed to extend, to prevent such magistrate from committing or holding to bail any British subject, charged with any such offence before him, in the same manner as such British subject might have been committed or holden to bail if this Act had not been passed, where the offence charged appears to such magistrate to be of so aggravated a nature as to be a fit subject for prosecution in any of his majesty's courts to which such British subjects are amenable. 53 Geo. III. cap. 155, sect. 105, as amended by Act XXII. 1854.

Magistrate how to proceed in such case; and what sentence he may pass.

The fine may be awarded to the aggrieved party.

Such convictions are removable by writ of *certiorari* into the supreme court.

* *v. paras.* 4668 *and* 4669.

But this provision is not meant to prevent the magistrate from committing the accused to the supreme court, if the offence charged is of an aggravated nature.

4622. The foregoing provisions, so far as they extend to cases of assault, forcible entries, or other injuries accompanied by force, not being felonies, against the person or property of any native of India, are hereby extended to the case of any assault, forcible entry, or other injury accompanied with force, not being felony, which may at any time hereafter be committed in any part of the territories under the British government, not being within the towns of Calcutta, or Madras, or the Islands of Bombay and Colaba, or the settlement of Prince of Wales' Island, Singapore, and Malacca, by any British subject or other person, against the person or property or any person whatever. Act VII. 1853, sect. 1.

The foregoing provisions extended to such offences against the person or property of any person whatever.

4623. The powers in such cases given to the magistrate may be lawfully exercised by any joint magistrate or other person lawfully exercising the powers of a magistrate,

These powers may be exercised by any officer with the powers of a magistrate.

in the case of any such offence as aforesaid, which may hereafter be committed within the district over which his authority extends. Act VII. 1853, sect. 2.

Power of magistrate in case of assault by one European British subject upon another.

4624. In the case of an assault by one British subject upon another British subject, a mofussil magistrate [has jurisdiction under Act VII. 1853, and also] may take penal recognizance, and proceed under the provisions of Act V. 1848. As a justice of the peace, acting in that office only, he has no judicial power in such case, and can only commit the party, if he think fit so to do, for trial to the supreme court. C. O. Nos. 44 and 66 of vol. 4.

Magistrate has jurisdiction in cases of debt, not exceeding 50 rupees, alleged to be due to natives from European British subjects.

4625. It is further enacted that in all cases of debt not exceeding the sum of 50 rupees, alleged to be due from any British subject to any native of India resident in the East Indies or parts aforesaid, and without the jurisdiction of the court of requests established at Calcutta, it is lawful for the magistrate of the zillah or district where such British subject is resident, or in which such debt has been contracted, to take cognizance of all such debts, and to examine witnesses upon oath, and in a summary way to decide between the parties, which decision is to be final and conclusive to all intents and purposes; and in all cases where any such debt is found to be due from any British subject to any such native of India, the amount thereof is to be levied in the same manner, and subject to the same regulations and provisions in respect to the commitment of the debtor, as are hereinbefore made and provided in respect to the levying of fines in case of the conviction of a British subject before such magistrate.(a) 53 Geo. III, cap. 155, sect. 106.

Amount awarded how to be levied.

Magistrate has jurisdiction in such cases, though he is not a justice of peace.

4626. A magistrate, or other officer exercising the full powers of a magistrate, who has not taken the oaths of qualification as a justice of the peace, may take cognizance of complaints against European British subjects to the extent specified in the provisions of sects. 105 and 106 of the 53rd George III, cap. 155. C. O. No. 57 of vol. 2. N. A. R. vol. 4, page 41. Const. No. 900.

But officers not exercising the full powers of a magistrate are not competent.

4627. But an assistant to a magistrate, not vested with full powers, is not competent to take cognizance of such cases. Const. No. 595.

Opinion of Advocate General regarding amenability of British officers and soldiers to mofussil magistrates in petty cases of assault, &c.

4628. As regards the amenability of British officers and soldiers to magistrates, under the 53rd George III, chapter 155, with reference to the provisions of the 4th George IV, chapter 81, and Reg. XX. 1825, the following opinion was given by the advocate general. "The statute 4th George IV, chapter 81, although it repealed the next or 106th section of the statute 53 George III, chapter 155, leaves the 105th section unrepealed; and Reg. XX. 1825, which was enacted by a subordinate legislative, and in my opinion solely with a view

(a) This provision is repealed as to debts due from officers and soldiers being European British subjects by 4 Geo. IV. cap 81, sect. 57. And, as it was enacted to provide more effectual redress in such civil controversies at a time when European British subjects were not amenable to the provincial civil courts, it might now be presumed that it is rendered invalid with regard to all such persons by Act XI. 1836, which declares that no one is to be excepted from the jurisdiction of such local courts by reason of place of birth or descent: but the nizamut adawlut has ruled that it must be considered in full force until expressly repealed. That court has also ruled that wages must be held to be a debt within the meaning of the term as used above.

of carrying out the provision of statute 4th George IV, chapter 81, cannot in any way effect the operation of the statute 53 George III, chapter 155. The statute 4 George IV, chapter 81, has been amended and re-enacted by successive enactments, 3 and 4 Vict. chapter 37, and 12 and 13 Vict. chapter 43.* Under the latter Acts, the same powers as were formerly conferred upon courts martial, distant more than 120 miles from the presidency, have been continued; but they both contain an express provision that nothing in those Acts contained shall be construed to exempt any officer or soldier from being proceeded against by the ordinary course of law, a provision which leaves the jurisdiction of the magistrates under statute 53 George III, chapter 155, and Act V. 1848, and of the supreme courts, wholly untouched. With respect to offences committed by British officers and soldiers, and not falling within the terms of statute 53 George III, or Act V. 1848, I am of opinion that they are only cognizable by the supreme court or courts martial, both of which courts appear to me to have concurrent jurisdiction over British officers resident beyond 120 miles from the presidency. C. O. No. 91 of vol. 4.

* *and since then by* 20 *and* 21 *Vict cap* 66.

If several charges are preferred separately against an European British subject, the sentences on conviction may be likewise separate.

4629. Where an indigo planter, an European British subject, was accused of using violence to four individuals, and the magistrate applied to the nizamut adawlut for information as to his competency to award a separate punishment for each offence, it was held that, if the offences were charged separately, there was no reason why the sentences on conviction should not be likewise separate. The court observed at the same time, that in such cases confinement is authorized only in default of payment of fine; and that if, on investigation, the magistrate should be of opinion that the offender ought to be brought to trial before the supreme court, he should proceed in the usual manner, reporting the case for the information and orders of government. Const. No. 632.

Such persons may appear by attorney.

4630. There appears no reason why Europeans, charged with offences under the above provisions, should not be allowed the privilege of appearing by attorney, which is enjoyed by natives.(*a*) Const. No. 570.

Fine how to be levied.

4631. Under these provisions, the power to imprison is only given in default of "*property within the district*" in which the fine could be levied; so that, unless it be at the time of conviction proved before the magistrate, or confessed by the party fined, that he has no property within the district, an attempt to levy by warrant must be made before the magistrate can commit the offender. After conviction and demand of the fine the magistrate may, in default of payment, immediately issue his warrant to levy the fine; and default would be incurred, if the offender, after demand made of payment, were to quit the court without making payment. But the magistrate has no authority, after conviction passed, to detain the defendant, or

(*a*) While recording the above opinion, the court observed "that they were not the authority to construe Acts of parliament." Now, by sect 1, Act XXII. 1839, persons tried for any offences in any of her majesty's courts of justice are admitted, after the close of the case for the prosecution, to make full answer and defence thereto by counsel learned in the law, or by attorney in courts where attornies may practice as counsel and by sect. 2, in cases of summary conviction by a magistrate or justice of peace, exercising jurisdiction within the limits of any of her majesty's supreme courts, persons accused are admitted to make their full answer and defence and to have all witnesses examined and cross-examined by counsel or attorney. See also para. 1094

require bail for his appearance, till *it be ascertained* whether there be property within the district on which the fine can be levied. He can only take bail under sect. 105 in such cases as are therein specified. If, however, it be at the time of conviction proved before the magistrate, or confessed by the offender, that he has no property within the district, the magistrate (after recording the proof or confession last mentioned) may at once commit for the fine. The offender is not bound upon conviction to disclose his property, or to declare whether he has property or not. If he be known to have property, or if it be doubtful whether he have any within the district, the magistrate should issue his warrant to levy, and deliver it to his officers for execution in the usual manner. The offender may rebut the proof tendered of his having no property, and give evidence of his having property, to prevent immediate commitment as above, and the magistrate is bound to receive such evidence if tendered; and he should call upon the offender to say whether he has any thing to offer in contradiction of the evidence of no property. If a warrant to levy the fine be issued, it is indispensable that notice of the seizure and intended sale be given by public advertisement; and, if practicable, by service on the offender himself; and the shortest notice that should be given is such as is requisite in cases of distress for rent* or the like. As to the meaning of the term property, it seems that the warrant of the magistrate to levy may, in default of sufficient *personal* property, be executed on the *real* property if any of the offender. But it should be in all cases executed in the first instance on the personalty, because, as the statute makes no provision for the transfer of realty to the purchaser, difficulties might arise as to his title, especially if he sue for possession in her majesty's court. Only the right, title, and interest (or property) of the offender can be sold. The magistrate, or his officer, may deliver over personal property seized and sold under the warrant to the purchaser; but has no authority to dispossess the party in possession of realty, or to deliver possession of it to the purchaser. He must leave him to recover possession by process of law. It may be that the offender has not the right of possession, but only the right of property. The magistrate should deliver to the purchaser the certificate or other document usually delivered in the mofussil to purchasers under judicial execution, and there ends his duty. If the executing officer has sold (as he ought) merely the right, title, and interest of the offender, the purchaser has no remedy against the magistrate, should that right, &c., prove to be moonshine. The risk of what property may be in the offender, lies with the purchaser. Of course no assurance of title or interest should be held out to the purchaser at the time of sale; and in such case the magistrate can have no right to retain the purchase money until the title be ascertained. Opinion of Advocate General in C. O. No. 79 of vol. 4.

* i. e. five days.

Procedure if a European British subject refuses to yield possession of property decreed to another.

4632. Where a European British subject had been guilty of the offence described in sect. 7, Act IV. 1840, by retaining possession of a house awarded to another party, and refusing to admit the constable who first served him with a summons, and then held a warrant for his apprehension,—the advocate general was of opinion that in all cases of warrants for the arrest of a party *convicted* by a magistrate or justice of the peace of any offence under the Act in question (or indeed under any Act giving similar power) the warrant may be executed (if necessary) by the breaking of a door or of the house in which the offender

may be, *after demand of admittance* accompained by *production of the warrant* and refusal to admit or open. The remedy is two fold, for the officer may not only break the door in execution as aforesaid of the warrant for the arrest of the convicted offender; but, if he hold also the magistrate's order to put the ousted party again into possession, he may, after demand and refusal of admittance, with production of his order as above, break open the door in execution of that order; and, once within the house, may arrest the offender under the other warrant. Opinion of Advocate General, May 31, 1853.—From this it would appear that the case must be tried *exparte*, if the defendant fails to appear on summons, and that the warrant must issue after conviction; and that in such case it is necessary to prove the due service of the summons and the failure to appear on the date specified therein, by the deposition of the officer employed to serve it.

Powers of justice.

Who may be admitted to bail on a charge of felony, and who may not: and rule for taking evidence on behalf of the person charged.

4633. Where any person is taken on a charge of felony or suspicion of felony before a justice of the peace, at any place beyond the local limits of the jurisdiction of any of her majesty's courts of justice erected or to be erected within the British territories, and the charge is supported by positive and credible evidence of the fact, or by such evidence as if not explained or contradicted raises in the opinion of the justice a strong presumption of the guilt of the person charged, such person is to be committed to prison by such justice in the manner hereinafter mentioned; but if the evidence given in support of the charge is not in the opinion of the justice such as to raise a strong presumption of the guilt of the person charged and to require his or her committal, or such evidence is adduced on behalf of the person charged as in his opinion weakens the presumption of his or her guilt, but there notwithstanding appears to him, in either of such cases, to be sufficient ground for judicial inquiry into his or her guilt, the person charged is to be admitted to bail by such justice in the manner hereinafter mentioned: provided always that nothing herein contained is to be construed to require any such justice to hear evidence on behalf of any person so charged as aforesaid, unless it appears to him to be meet and conducive to the ends of justice to hear the same. 9 George IV. cap. 74, sect. 2.

Before any person charged with felony is bailed or committed, the justice is to take down in writing the examination, &c. and to bind witnesses to appear at the trial.

4634. The justice of peace, before he admits to bail or commits to prison any person arrested for felony or on suspicion of felony, is to take the examination of such person, and the information upon oath of those who know the facts and circumstances of the case, and is to put the same or as much thereof as is material into writing, and the justice is to certify such bailment in writing; and every such justice has authority to bind by recognizance all such persons, as know or declare any thing material touching any such felony or suspicion of felony, to appear at the next court of oyer and terminer or jail delivery, or superior criminal court or sessions of the peace, at which the trial thereof is intended to be, then and there to prosecute or give evidence against the party accused; and such justice is to subscribe all such examinations, informations, bailments, and recognizances, and to deliver or cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court. 9 George IV. cap. 74. sect. 3.

Examinations, &c. to be delivered to the supreme court.

4635. Every justice of the peace, before whom any person is taken on a charge of misdemeanor or suspicion thereof, is to take the examination of the person charged and the

information upon oath of those who know the facts and circumstances of the case, and is to put the same, or as much thereof as is material, into writing, before he commits to prison or requires bail from the person so charged; and in every case of bailment is to certify the bailment in writing, and has authority to bind all persons by recognizance to appear to prosecute or give evidence against the party accused, in like manner as in cases of felony; and is to subscribe all examinations, informations, bailments, and recognizances, and to deliver or cause the same to be delivered to the proper officer of the court in which the trial is to be, before or at the opening of the court, in like manner as in cases of felony. 9 George IV. cap. 74, sect. 4.

Penalty on justice offending in any thing contrary to the intent and meaning of the above provisions.

4636. If any justice offends in any thing contrary to the true intent and meaning of these provisions, the court to whose officer any such examination, information, evidence, bailment, recognizance, or inquisition, ought to have been delivered, is upon examination and proof of the offence in a summary manner to set such fine upon every such justice as the court thinks meet. 9 George IV. cap. 74, sect. 6.

Accessary before the fact may be tried as such, or as a substantive felon, by any court which has jurisdiction to try the principal felon, although the offence be committed on the seas or abroad.

4637. For the more effectual prosecution of accessaries before the fact to felony, it is enacted, that if any person counsels, procures, or commands any other person to commit any felony, whether the same be a felony at common law or by virtue of any statute or statutes made or to be made, the person so counselling, procuring, or commanding is to be deemed guilty of felony; and may be indicted and convicted either as an accessary before the fact to the principal felony, together with the principal felon, or after the conviction of the principal felon; or may be indicted and convicted of a substantive felony, whether the principal felon has or has not been previously convicted, or is or is not amenable to justice; and may be punished in the same manner as any accessary before the fact to the same felony if convicted as an accessary may be punished; and the offence of the person so counselling, procuring, or commanding, howsoever indicted, may be inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felon, in the same manner as if such offence had been committed at the same place as the principal felony, although such offence may have been committed either on the high seas, or at any place on land, whether within her majesty's dominions or without: and in case the principal felony, and the offence of counselling, procuring, or commanding, have been committed in different places, the last-mentioned offence may be inquired of, tried, determined, and punished in any of her majesty's courts of justice within the British territories in India, having jurisdiction to try either of the said offences; provided always, that no person who has once been duly tried for any such offence, whether as an accessary before the fact or as for a substantive felony, is to be liable to be again indicted or tried for the same offence. 9 George IV. cap. 74, sect 7.

If the offence be committed in different places, the accessary may be tried in any of the Queen's courts in India having jurisdiction.

Accessary after the fact may be tried by any court which has jurisdiction to try the principal felon.

4638. If any person becomes an accessary after the fact to any felony, whether the same be a felony at common law, or by virtue of any statute or statutes made or to be made, the offence of such person may be inquired of, tried, determined, and punished by any court which has jurisdiction to try the principal felon, in the same manner, as if the

act, by reason whereof such person has become an accessary, were committed at the same place as the principal felony, although such act has been committed either on the high seas or at any place on land, whether within her majesty's dominions or without; and in case the principal felony, and the act by reason whereof any person has become accessary, have been committed in different places, the offence of such accessary may be inquired of, tried, determined, and punished in any of her majesty's courts of justice within the British territories in India, having jurisdiction to try either of the said offences; provided always that no person who has once been duly tried for any offence of being an accessary is to be liable to be again indicted or tried for the same offence. 9 George IV. cap. 74, sect. 8.

If the offence be committed in different places, the accessary may be tried in any court having jurisdiction.

4639. If any principal offender is in any wise convicted of any felony, it is lawful to proceed against any accessary, either before or after the fact, in the same manner as if such principal felon had been attainted thereof, notwithstanding such principal felon should die or be pardoned, or otherwise delivered before attainder; and every such accessary is to suffer the same punishment, if he or she be in any wise convicted, as he should have suffered if the principal had been attainted. 9 George IV. cap. 74, sect. 9.

Accessary may be prosecuted after conviction of the principal, though the principal be not attainted.

4640. In any indictment or information for any felony or misdemeanor wherein it is requisite to state the ownership of any property whatsoever, whether real or personal, which belongs to or is in the possession of more than one person, whether such persons be partners in trade, joint tenants, parceners, or tenants in common, it is sufficient to name one of such persons, and to state such property to belong to the person so named, and another or others as the case may be; and whenever in any indictment or information for any felony or misdemeanor it is necessary to mention, for any purpose whatsoever, any partners, joint tenants, parceners, or tenants in common, it is sufficient to describe them in the manner aforesaid: and this provision is to be construed to extend to all joint-stock companies and trustees. 9 George IV. cap. 74, sect. 10.

In indictments for offences committed on the property of partners, it may be laid in any one partner by name, and others.

4641. If any person aids, abets, counsels, or procures the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, every such person is, on conviction before a justice of the peace, to be liable for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment, to which a person guilty of a first, second, or subsequent offence as a principal offender is by this Act made liable. 9 George IV. cap. 74, sect. 39.

Aiders and abettors in offences punishable by justice on summary conviction.

4642. Any person found committing any offence punishable either upon indictment or upon summary conviction by virtue of this Act, may be immediately apprehended without a warrant by any peace-officer, or by the party aggrieved, or by his servant, or any person authorized by him, and forthwith taken before some neighbouring justice of the peace, to be dealt with according to law: and if any credible witness proves upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever, on or with respect to which any

A person may be apprehended in the act of committing an offence.

A justice upon good grounds of suspicion may grant a search warrant.

such offence has been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods: and any person to whom any property is offered to be sold, pawned, or delivered, if he has reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and if in his power is required, to apprehend and forthwith to carry before a justice of the peace the party offering the same, together with such property, to be dealt with according to law. 9 George IV. cap. 74, sect. 40.

A person to whom property suspected to be stolen, &c is offered, may seize the party offering.

4643. The prosecution for every offence punishable on summary conviction under this Act is to be commenced within three calendar months after the commission of the offence, and not otherwise; and the evidence of the party aggrieved is to be admitted in proof of the offence. 9 George IV. cap. 74, sect. 41.

Summary proceedings must be commenced within three months.

4644. Where any person is charged on the oath of a credible witness, before any justice of the peace, with any such offence, the justice may summon the person charged to appear at a time and place to be named in such summons, and if he does not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode) the justice may either proceed to hear and determine the case *exparte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice of the peace: or the justice before whom the charge is made may (if he so think fit) without any previous summons (unless where otherwise specially directed) issue such warrant; and the justice before whom the person charged appears or is brought is to proceed to hear and determine the case. 9 George IV. cap. 74, sect. 42.

Mode of compelling the appearance of persons punishable on summary conviction.

4645. Every sum of money which is forfeited for the value of any property stolen or taken, or for the amount of any injury done, (such value or amount to be assessed in such case by the convicting justice) is to be paid to the party aggrieved, if known, except where such party has been examined in proof of the offence; or when the party aggrieved is unknown, such sum is to be applied in the same manner as the penalty: provided always, that where several persons join in the commission of the same offence, and are, upon conviction thereof, each adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, in every such case no further sum is to be paid to the party aggrieved than that which is forfeited by one of such offenders only, and the corresponding sum or sums forfeited by the other offender or offenders are to be applied in the same manner as any penalty imposed by a justice of the peace is herein directed to be applied. 9 George IV. cap. 74, sect. 43.

Application of forfeitures and penalties on summary convictions.

Proviso if more than one is adjudged to forfeit the value of the injury.

4646. In every case of a summary conviction under this Act, where the sum which is forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which is imposed as a penalty by the justice, is not paid either immediately after the conviction or within such period as the justice at the time of the conviction appoints, it is lawful for the convicting justice (unless where otherwise specially directed) to commit the offender to the common jail or house of correction, there to be imprisoned

If a person summarily convicted, does not pay, &c. the justice may commit him.

only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two calendar months, where the amount of the sum forfeited or of the penalty imposed, or of both (as the case may be), together with the costs, does not exceed fifty sicca rupees; and for any term not exceeding four calendar months, where the amount with costs does not exceed one hundred sicca rupees; and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount, with costs. 9 George IV. cap. 74, sect. 44.

Scale of imprisonment.

4647. Provided always that where any person is summarily convicted before a justice of the peace of any offence against this Act, and it is a first conviction, it is lawful for the justice, if he so think fit, to discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved, for damages and costs, or either of them, as is ascertained by the justice. 9 George IV. cap. 74, sect. 45.

The justice may discharge the party from his conviction in certain cases.

4648. In case any person convicted of any offence punishable upon summary conviction by virtue of this Act has paid the sum adjudged to be paid, together with costs under such conviction, or has suffered the imprisonment awarded for non-payment thereof, or the imprisonment adjudged in the first instance, or has been discharged from his conviction in the manner aforesaid, in every such case he is to be released from all further or other proceedings for the same cause. 9 Geerge IV. cap. 74, sect. 46.

A summary conviction is a bar to any other proceeding for the same cause.

4649. The justice before whom any person is convicted of any offence against this Act may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case may require; *videlicet*,

Form of conviction.

" Be it remembered, that on the day of in the year of " our Lord at [*as the case may be*] *A. O.* is convicted " before me *I. P.*, magistrate of , and one of her majesty's justices of the peace, for " that he the said *A. O.* did [*specify the offence, and the time and place when and where the " same was committed, as the case may be, and on a second conviction state the first conviction,*] " and I the said *I. P.* adjudge the said *A. O.* for the said offence to be imprisoned in the " [*or* to be imprisoned in the and there kept to hard " labour] for the space of ; *or*, I adjudge the said *A. O.* for his said offence " to forfeit and pay [*here state the penalty actually imposed, or " state the penalty, and also the value of the articles stolen, or the amount of the injury, and " as the case may be*], and also to pay the sum of for costs; and in " default of immediate payment of the said sums to be imprisoned in the " [*or* to be imprisoned in the and there " kept to hard labour] for the space of unless the said sums shall " be sooner paid; [*or*, and I order that the said sums shall be paid by the said *A. O.* " on or before the day of ;] and I direct that the said " sum of [i. e. *the penalty only*] shall be paid to " of aforesaid, in which the said offence was committed, " to be by him applied according to the directions of the statute in that case made and

" provided; [*or* that the said sum of i. e. *the penalty*, shall be paid to, " &c. *as before*,] and that the said sum of [i. e. *the value of the articles " stolen, or the amount of the injury done*] shall be paid to *C. D.* [*the party aggrieved, " unless he has been examined in proof of the offence, in which case state that fact, and dis- " pose of the whole like the penalty, as before*]. Given under my hand and seal, the day and " year first above-mentioned."
9 George IV. cap. 74, sect. 47.

Convictions to be returned to the sessions.

How far they are to be evidence in future cases.

4650. Every justice of the peace before whom any person is convicted of any offence against this Act is to transmit the conviction to the next court of general or quarter sessions, there to be kept by the proper officer among the records of the court; and upon any indictment or information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the court, or proved to be a true copy, is to be sufficient evidence to prove conviction for the former offence, and the conviction is to be presumed to have been unappealed against until the contrary be shown. 9 George IV. cap. 74, sect. 50.

Having in possession more than five pieces of counterfeit coin, without lawful excuse, punishable with fine or three months' imprisonment.

4651. If any person has in his custody, without lawful excuse, the proof whereof should lie on the party accused, any greater number of pieces than five pieces of any false or counterfeit gold or silver coin of any of the territories under the British government in India or usually current and received as money in payment in any part of the British territories in India, every such person, being thereof convicted upon the oath of one or more credible witness or witnesses before one of her majesty's justices of the peace, is to forfeit and lose all such false and counterfeit coin; which are to be cut in pieces and destroyed by order of such justice: and is for every offence to forfeit and pay any sum of money not exceeding in value forty sicca rupees, or less than twenty sicca rupees, in the currency of the place in which such offence is committed, for every such piece of false or counterfeit coin which is found in the custody of such person, one moiety to the informer or informers, and the other moiety to the poor of the presidency, settlement, or place in which such offence is committed; and, in case any such penalty is not forthwith paid, it is lawful for such justice to commit the person or persons who are adjudged to pay the same to the common jail or house of correction, there to be kept to hard labour for the space of three calendar months, or until such penalty shall be paid. 9 George IV. cap. 74, sect. 75.

Persons in possession of shipwrecked goods not giving a satisfactory account, punishable by fine.

4652. If any goods, merchandize, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, are by virtue of a search warrant, to be granted as hereinafter mentioned, found in the possession of any person, or on the premises of any person with his knowledge, and such person, being carried before a justice of the peace, does not satisfy the justice that he came lawfully by the same, then the same is by order of the justice to be forthwith delivered over to or for the use of the rightful owner thereof; and the offender, on the conviction of such offence before the justice, is to forfeit and pay, over and above the value of the goods, merchandize, or articles, such sum of money, not exceeding two hundred sicca rupees, as to the justice seems meet. 9 George IV. cap. 74, sect. 91.

Shipwrecked goods offered for sale may be seized.

4653. If any person offers or exposes for sale any goods, merchandize, or articles whatsoever, which have been unlawfully taken, or reasonably suspected so to have been taken, from any ship or vessel in distress, or wrecked, stranded, or cast on shore, in every such case any person to whom the same is offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and is with all convenient speed to carry the same, or to give notice of such seizure, to some justice of the peace; and if the person who has offered or exposed the same for sale, being duly summoned by such justice, does not appear and satisfy the justice that he came lawfully by such goods, merchandize, or articles, then the same are by order of the justice to be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same; and the offender, on conviction of such offence by the justice is to forfeit and pay, over and above the value of the goods merchandize, or articles, such sum of money, not exceeding two hundred sicca rupees, as to the justice seems meet. 9 George IV. cap. 74, sect. 92.

Stealing dogs, or beasts, or birds, kept in confinement.

4654. If any person steals any dog, or steals any beast or bird ordinarily kept in a state of confinement, not being the subject of larceny at common law, every such offender, being convicted thereof before a justice of the peace, is for the first offence to forfeit and pay, over and above the value of the dog, beast, or bird, such sum of money, not exceeding two hundred sicca rupees, as to the justice seems meet; and if any person so convicted is afterwards guilty of any of the said offences, and is convicted thereof in like manner, every such offender is to be committed to the common jail or house of correction, there to be kept to hard labour for such term, not exceeding twelve calendar months, as the convicting justice thinks fit; and on such subsequent conviction the justice may further order the offender, if a male, to be once or twice publicly or privately whipped, after the expiration of four days from the time of such conviction. 9 George IV. cap. 74, sect. 97.

Receivers of property where the original offence is punishable summarily, are punishable as original offenders.

4655. Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence, or for the first and second offence only, or for the first offence only, any person who receives any such property, knowing the same to be unlawfully come by, is on conviction thereof before a justice of the peace to be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by this Act made liable. 9 George IV. cap. 74, sect. 113.

Breaking down the dam of a fishery, &c.

4656. If any person unlawfully and maliciously breaks down or otherwise destroys the dam of any fish-pond, or of any water which is private property, or in which there is any private right of fishery, with intent thereby to take or destroy any of the fish in such pond or water, or so as thereby to cause the loss or destruction of any of the fish; or unlawfully and maliciously puts any lime or other noxious material in any such pond or water, with intent thereby to destroy any of the fish therein; every such offender, being convicted thereof before a justice of the peace, is to forfeit and pay, over and above the amount of

the injury done, such sum of money, not exceeding fifty sicca rupees, as to the justice seems meet. 9 George IV. cap. 74, sect. 121.

Malice against the owner of the property not essential to the offence.

4657. Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence, whether the same be punishable upon indictment or upon summary conviction, is equally to apply and to be enforced, whether the offence is committed from malice conceived against the owner of the property in respect of which it is committed, or otherwise. 9 George IV. cap. 74, sect. 124.

Stealing the whole or part of any growing tree &c., or of any pale, post, or stile, or any growing cultivated plant, &c; or maliciously injuring any real or personal property.

4658. If any person steals the whole or any part of any growing tree, sapling or shrub, or any underwood, or of any pale, post, or stile, or any growing cultivated plant, root, fruit, or vegetable production, or unlawfully and maliciously commits any damage, injury, or spoil to or upon any real or personal property whatsoever, either of a public or private nature, every such offender being convicted before a magistrate or justice of the peace is for the first offence to forfeit and pay, over and above the amount of the injury done, such sum of money not exceeding fifty rupees as to the magistrate or justice of the peace seems meet; and if any person so convicted is afterwards guilty of any of the said offences, and is convicted thereof in like manner, every such offender is, for such second offence, to be imprisoned with or without hard labour, for such term not exceeding six calendar months as the convicting magistrate or justice of the peace thinks fit. Act XXXI. 1838, sect. 29.

Application of forfeiture for such offence.

In case of the nonpayment of any forfeiture or penalty for such offence, the magistrate or justice may award a term of imprisonment.

4659. Every sum of money which is forfeited for the amount of any injury done (such amount in each case to be assessed by the convicting magistrate or justice of the peace) is to be paid to the party aggrieved, if known, except when such party has been examined in proof of the offence; and in every case of a summary conviction under this Act when the sum which is forfeited for the amount of the injury done, or which is imposed as a penalty by the magistrate or justice of the peace, is not paid, either immediately after the conviction or within such period as the magistrate or justice of the peace at the time of conviction appoints, it is lawful for the convicting magistrate or justice of the peace to commit the offender to the common jail or house of correction to be imprisoned only, or to be imprisoned with hard labor according to the discretion of the magistrate or justice of the peace, for any term not exceeding two calendar months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs does not exceed fifty rupees; and for any term not exceeding four calendar months, when the amount with costs does not exceed one hundred rupees; and for any term not exceeding six calendar months in any other case; the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs. Act XXXI. 1838, sect. 30.

If the forfeiture is realized from several, the amount forfeited by one only is to be paid to the party aggrieved.

4660. Provided always that where several persons join in the commission of the same offence, and are, upon conviction thereof, each adjudged to forfeit a sum equivalent to the amount of the injury done, in every such case no further sum is to be paid to the party aggrieved than that which is forfeited by one of such offenders only. Act XXXI. 1838, sect. 31.

Summary conviction for such offence is a bar to any other proceeding for the same cause.

4661. In case any person convicted of any offence punishable upon summary conviction by virtue of this Act has paid the sum adjudged to be paid together with costs under such conviction, or has suffered the imprisonment awarded for non-payment thereof, every such person is to be released from all further or other proceedings for the same cause. Act XXXI. 1838, sect. 32.

Malice against the owner of the property not essential to the offence.

4662. Every punishment and forfeiture by this Act imposed on any person maliciously committing any offence is equally to apply and to be enforced whether the offence has been committed from malice conceived against the owner of the property in respect of which it is committed or otherwise. Act XXXI. 1838, sect. 33.

Ownership of such property, if for the use of the public.

4663. It is not necessary in any proceeding either for theft or for malicious injury, spoil, or damage, to or upon any property dedicated to public use or ornament, to allege the same to be the property of any person. Act XXXI. 1838, sect. 34.

Appeals from sentences of justice of peace or magistrate under the above rules lie to the session judge, as in ordinary cases.

4664. An appeal lies from all sentences passed by any justice of the peace acting without the local limits of any of her majesty's supreme courts upon convictions had before him for any offence, and from all sentences passed by any magistrate upon convictions had before him exercising jurisdiction under the provisions of statute 53 George III. cap. 155, or Act VII. 1853, to the same authority and subject to the same rules as are provided by the Regulations and Acts of the government in the case of sentences passed by magistrates in the exercise of their ordinary jurisdiction. And cases so made the subject of appeal are not afterwards liable to revision by means of a writ of certiorari. Act IV. 1843, sect. 1. Act VII. 1853, sect. 1.

And there is no limitation within which an appeal does not lie.

4665. An appeal lies to the session judge from the order of a magistrate under sect. 105 of statute 53 George III. cap. 155, although the fine does not exceed 50 rupees. The words "subject to the same rules" refer to the rules regarding the ground upon which appeals are admissible, not to the limitation of appeals. Resolution of Nizamut Adawlut No. 1388, December 8, 1853.

But no appeal lies from an order under sect. 106.

4666. No appeal lies from the order of a magistrate under sect. 106 of the statute, as it is expressly stated therein that the magistrate's decision is to be final and conclusive to all intents and purposes. Letter of Nizamut Adawlut to Judge of Tirhoot No. 1331, November 30, 1849.

If such appeal is not preferred, a writ of certiorari may be obtained.

4667. Nothing in this Act contained is to be held to take away the power of quashing any conviction by means of a writ of certiorari, in any other case than where there has been such appeal as aforesaid. Act IV. 1843, sect. 2.

Proceedings of justices of the peace how to be removed into the supreme court by writ of certiorari.

4668. All convictions, judgments, orders, and other proceedings, which are had, made, or pronounced by or before any justice of the peace within any of the British settlements or territories in India, out of the court of oyer and terminer within and for the same, are and may be removable by writ of certiorari into the court of oyer and terminer and jail delivery of and for the same presidency, at the instance of any of the parties thereby affected or aggrieved, at any time within the space of six calendar months next after the

making or pronouncing thereof respectively; and for that purpose it is and may be lawful to and for any one or more of the justices of the said court of oyer and terminer and jail delivery, and such justice or justices is and are hereby required, at the instance of such party or parties, to grant his fiat or warrant to the keeper of the rolls of the peace, or other proper officer, to award a writ of certiorari under the seal of the supreme court of judicature for the removal and bringing of such conviction, judgment, order, or other proceeding into the said court of oyer and terminer and jail delivery; and the said court of oyer and terminer and jail delivery has full power and authority to hear and determine the matter of such conviction, judgment, order, and other proceeding so removed, and to quash or affirm the same, so that the same be not quashed for want of form, but on the merits only, and to pronounce judgment thereon, in the like manner as the court of Queen's Bench at Westminster can or may do upon convictions, judgments, orders, or other proceedings had or made by or before any justices of the peace, or court of quarter-sessions in England, removed or brought into the said court of Queen's Bench by writ of certiorari. 33 George III. cap. 52, sect. 153.

On what conditions writs of certiorari are to be granted.

4669. Before the granting of any such writ the like recognizances are to be entered into, and the party or parties applying for such writ are to be put under the same terms and conditions, in all respects, as are by law directed and provided in the cases of writs of certiorari awarded or granted for the removal of any conviction, judgment, order, or other proceeding, had or made by or before any justice or justices of the peace in England into the said court of Queen's Bench, or as by the usage and practice of the same court hath been accustomed. 33 George III. cap. 52, sect. 154.

CHAPTER II.

OF FOREIGNERS.

Every foreigner to report his arrival in India;

4670. Every foreigner shall, on his arrival in any part of the territories in the possession of and under the British government in India from any port or place not within the said territories, or from any port or place not subject to the provisions of this Act, forthwith report himself to the commissioner of police, if he shall arrive at any of the presidency towns; or, if he shall arrive at any other place, to the magistrate or to such other officer as shall be appointed to receive such reports by the governor general in council, or (in places within their respective jurisdictions) by the executive government of any presidency or place, or by the chief commissioner of the Punjab, the chief commissioner of Oude, or the commissioners of Mysore, Coorg, Nagpore, Scinde, Pegu, and the Tenasserim and Martaban provinces respectively. Provided that nothing contained in this section shall extend to any foreigner being the master or commander of a ship or vessel, or employed therein. Act XXXIII. 1857, sect. 1.

except a foreigner being the master of a vessel or employed therein.

What to be stated in the report.

4671. The report shall be in writing; and shall be signed by the person reporting himself; and shall specify his name or names, the nation to which he belongs, the place from which he shall have come, the place or places of his destination, the object of his pursuit, and the date of his arrival in the said territories: and the report shall be recorded by the officer to whom it is made. Act XXXIII. 1857, sect. 2.

Foreigners being masters of vessels or employed therein, to report themselves when they cease to be so employed.

4672. If any person included in the proviso to section 1 shall remain in any part of the said territories after he shall have ceased to be employed in a ship or vessel, he shall forthwith report himself in manner aforesaid. Act XXXIII. 1857, sect. 3.

Foreigners neglecting to report themselves to be dealt with in like manner as foreigners travelling without a license.

4673. If any foreigner shall neglect to report himself as required by this Act, he may be dealt with in the manner hereinafter provided in respect of foreigners travelling without a license. Act XXXIII. 185 , sect. 4.

No foreigner to travel in India without a license.

4674. No foreigner shall travel in or pass through any part of the territories in the possession of and under the British government in India without a license. Act XXXIII. 1857, sect. 5.

License by whom to be granted.

4675. Licenses under this Act may be granted by the secretary to the government of India in the foreign department; or by the chief secretary to the governments of Fort Saint George and Bombay respectively; or by the chief commissioner of the Punjab, the chief commissioner of Oude, or the commissioners of Mysore, Coorg, Nagpore, Scinde, Pegu, and the Tenasserim and Martaban provinces respectively; or by such other officers as shall be specially authorized so to do by the governor general of India in council, or by the executive government of any presidency or place, or by any of the chief commissioners or commissioners aforesaid. Act XXXIII. 1857, sect. 6.

What to be stated in license.

4676. Every such license shall state the name or names of the person to whom the license is granted, the nation to which he belongs, the district or districts through which he is authorized to pass, or the limits within which he is authorized to travel, and the period (if any) during which the license is intended to have effect. Act XXXIII. 1857, sect. 7.

License may be granted subject to conditions and may be revoked.

4677. The license may be granted subject to such conditions (if any) as the governor general in council, or the executive government of any presidency or place, or (as regards their several jurisdictions) any of the said chief commissioners or commissioners, may by any general order direct; or as the officer granting the license may deem necessary: and the license may be revoked at any time by the governor general in council, or by the executive government of any presidency or place, or by the officer granting the same. Act XXXIII. 1857, sect. 8.

Foreigner travelling without or contrary to the conditions of license may be apprehended.

4678. If any foreigner travel in or attempt to pass through any part of the said territories without such license as aforesaid, or beyond the districts or limits mentioned therein, or after such license shall have been revoked, or shall violate any of the conditions therein specified, he may be apprehended without warrant by a magistrate, deputy magistrate, or assistant to a magistrate, or by any European commissioned officer in the service of her majesty, or by a member of a volunteer corps enrolled by authority of government whilst on duty, or by any police officer. Act XXXIII. 1857, sect. 9.

Procedure upon apprehension.

4679. If any person be apprehended by a person not being a magistrate or a police officer, he shall be delivered over as soon as possible to a police officer, and carried before a magistrate; and whenever any person shall be apprehended by or taken before a magistrate, such magistrate shall forthwith report the case to the government to which he is subject, and shall cause the person brought before him to be discharged, or to be conveyed to one of the presidency towns, or to be detained pending the orders of such government. Act XXXIII. 1857, sect. 10.

Magistrate to report to government.

Persons apprehended may be admitted to bail.

4680. All persons apprehended or detained under the above-mentioned provisions of this Act, may be admitted to bail by a magistrate or by any of the officers authorized to grant licenses, and shall be put to as little inconvenience as possible during their detention in custody. Act XXXIII. 1857, sect. 11.

Removal of persons apprehended.

4681. The governor general in council, or the executive government of any presidency or place, may order any such person to remove himself from the said territories by sea or by such other route as the government may direct; or the government may cause him to be removed from the said territories by such route and in such manner as to the government shall seem fit. Act XXXIII. 1857, sect. 12.

Government may order any foreigner to remove himself.

4682. The governor general in council, or the executive government of any presidency or place, or any of the chief commissioners or commissioners mentioned in section 6 of this Act, may by writing order any foreigner within his jurisdiction to remove himself from the territories in the possession of and under the British government in India or to remove himself therefrom by a particular route to be specified in the order. Act XXXIII. 1857, sect. 13.

Foreigner refusing to remove or returning without license after removal may be apprehended and detained.

4683. If any foreigner ordered to remove himself from the said territories, or ordered to remove himself therefrom by any particular route, shall neglect or refuse so to do; or if any foreigner, having removed himself from the said territories in consequence of an order issued under any of the provisions of this Act, or having been removed from the said territories under any of the said provisions; shall wilfully return to the said territories without a license in writing granted by the governor general of India in council or by the government or officer under whose order he shall have removed himself or been removed;—such foreigner may be apprehended and detained in safe custody, until he shall be discharged therefrom by order of the governor general in council, or of the executive government, or of one of the said chief commissioners or commissioners mentioned in section 6 of this Act, within whose jurisdiction he shall be so apprehended or detained, upon such terms and conditions as the said governor general in council, executive government, chief commissioner, or commissioner shall deem sufficient for the peace and security of the British territories, and of the allies of her majesty, and of the neighbouring princes and states. Act XXXIII. 1857, sect. 14.

Government may prohibit persons, not being natural born subjects, from travelling or pass-

4684. The governor general in council, or the executive government of any presidency or place, or any of the chief commissioners or commissioners mentioned in section 6 of this Act, may by order prohibit any person or persons, or any class or classes of persons,

ing through any part of India without a license.

not being a natural-born subject or subjects of her majesty within the meaning of section 81, 3 and 4 William IV, cap. 85, from travelling in or passing through any part of the said territories, or from passing from any part of India to another, without a license to be granted by such officer or officers as shall be specified in the order; and if such person shall wilfully disobey such order, he may be apprehended without warrant by any of the officers specified in section 9 of this Act, and carried before a magistrate and dealt with under the provisions of section 10 in the same manner as if he were a foreigner; and the government may order such person to be detained in safe custody, or under the surveillance of the police, so long as it may be deemed necessary for the peace and security of the British territories. Act XXXIII. 1857, sect. 15.

Police officer may board vessel to ascertain whether foreigners are on board.

4685. It shall be lawful for the commissioner of police, or for a magistrate, or his assistant, or for any officer appointed to receive reports as mentioned in the first section of this Act, or for any police officer under the authority of such commissioner or magistrate, to enter any ship or vessel in any port or place within the territories in the possession of and under the control of the British government in India in order to ascertain whether any foreigner bound to report his arrival under section I of this Act, is on board of such ship or vessel; and it shall be lawful for such commissioner of police, or other officer as aforesaid, to adopt such means as may be reasonably necessary for that purpose; and the master or commander of such ship or vessel shall also, before any of the passengers are allowed to disembark, if he shall be required so to do by such commissioner of police, or other officer as aforesaid, deliver to him a list, in writing, of the passengers on board, specifying the ports or places at which they embarked, and the ports or places of their disembarkation or intended disembarkation, and answer, to the best of his knowledge, all such questions touching the passengers on board the said ship or vessel, or touching those who may have disembarked in any part of India, as shall be put to him by the commissioner of police, or other officer as aforesaid. If any foreigner on board such ship or vessel in any part of India shall refuse to give an account of his objects of pursuit in India, or if his account thereof shall not be satisfactory, the officer may refuse to allow him to disembark, or he may be dealt with in the same manner as a foreigner travelling in India without a license. Act XXXIII. 1857, sect. 16.

Master of vessel to furnish list of passengers, and to give information respecting them.

Foreigner refusing to give account of himself not to be allowed to disembark.

Obstructing officers.

4686. Whoever intentionally obstructs any officer in the exercise of any of the powers vested in him by this Act, shall, upon conviction before a magistrate, be liable to a fine not exceeding one thousand rupees, or to imprisonment for any term not exceeding six months, or to both. Act XXXIII. 1857, sect. 17.

Neglect by master of vessel to comply with requisitions of Act.

4687. If the master or commander of any ship or vessel shall wilfully neglect or refuse to comply with the requisitions of this Act, he shall, on conviction before a magistrate, be liable to a fine not exceeding two thousand rupees. Act XXXIII. 1857, sect. 18.

Penalty for false answer or report.

4688. Whoever shall wilfully give a false answer to any question which by this Act he is bound to answer, or shall make any false report, shall upon conviction before a magistrate, be liable to imprisonment for a period not exceeding two years, and shall be liable to a fine not exceeding one thousand rupees. Act XXXIII. 1857, sect. 19.

Interpretation of "foreigner;"

4689. The word "foreigner" in this Act shall be deemed to mean a person not being either a natural-born subject of her majesty within the meaning of section 81, 3 and 4 William IV, cap. 85, or a native of a place in the possession and under the government of the British government in India. The word "magistrate" shall include every person exercising the full powers of a magistrate, and a justice of the peace. Act XXXIII. 1857, sect. 20.

and "magistrate."

Proof of being a foreigner.

4690. If a question shall arise whether any person alleged to be a foreigner and to be subject to the provisions of this Act is a foreigner or not, or is or is not subject to the provisions of this Act, the onus of proving that such person is not a foreigner or is not subject to the provisions of this Act, shall lie upon such person. Act XXXIII. 1857, sect. 21.

Duration of Act.

4691. This Act shall continue in force for two years:* and it shall not extend to the settlement of Prince of Wales' Island, Singapore, and Malacca, or to the territory of Aden, unless the same shall be specially declared applicable to such settlement or territory by the governor general of India in council. Act XXXIII. 1857, sect. 22.

* i. e. to Dec. 5. 1859.

Act not to extend to certain places unless so declared.

Exceptions and exemptions.

4692. The foregoing provisions of this Act shall not extend to any foreign minister duly accredited by his government, nor to any consul or vice-consul, nor to any person under the age of fourteen years, nor to any person in the service of the British government. The governor general in council, or (as regards their respective jurisdictions) the executive government of any presidency or place, or any of the chief commissioners or commissioners mentioned in section 6 of this Act, may exempt any person, or any class of persons, either wholly or partially, or temporarily or otherwise, from all or any of the provisions of this Act; and may at any time revoke any exemption. Act XXXIII. 1857, sect. 23.

Indemnity.

4693. Any officer of government or other person who, prior to the passing of this Act, may have done any thing which would have been justified by this Act if it had been in force at the time, is hereby indemnified for so doing; and no action or other proceeding shall be commenced or prosecuted in respect of any thing so done. Act XXXIII. 1857, sect. 24.

CHAPTER III.

OF HUSBAND, WIFE, AND CHILDREN.

Persons neglecting to support their wives and families, are to be required to do so by the magistrate; and on failure thereof are liable to imprisonment.

4694. Any person amenable to the jurisdiction of the zillah and city courts, who possesses the means of supporting his wife and children, and notwithstanding deserts them and wilfully neglects to provide for their support, on proof thereof to the satisfaction of the magistrate, or joint magistrate, of the zillah in which the party so deserting and neglecting his family resides, is to be required to provide for the maintenance of his family in a suitable manner, according to his situation and circumstances in life; and on his failing so to do, is to be considered guilty of a misdemeanor, and is liable to imprisonment

for a period not exceeding one month. He is also liable to a repetition of the sentence upon any subsequent conviction of a similar misdemeanor, after having been required to provide for the support of his family. Provided, however, that nothing in this section is to render a husband liable to punishment for not maintaining his wife, if it be clearly shown that the latter has forfeited all just claim to support from her husband, by living in adultery with another person, or by other acts implying wilful abandonment of his protection.(a) Reg. VII. 1819, sect. 3.

This does not apply to the case of a wife abandoning her husband's protection.

This may be applied to illegitimate children; and to their mothers.

4695. The above section is to be held applicable to illegitimate as well as to legitimate children; and may also be applied, at the discretion of the magistrate, to secure a proper maintenance for the mothers of illegitimate offspring, whilst in a state of pregnancy, or having the care of an infant child. Reg. VII. 1819, sect. 4.

Rule regarding the evidence of the mother of an illegitimate child *quoad* the alleged father.

4696. The evidence of the mother of an illegitimate child, against the alleged father, is *primâ facie* good as far as it goes; but should be sifted and weighed as any other testimony, and tested, as far as is practicable, by any circumstantial evidence that may offer. The result must then depend on the belief or otherwise reposed in it by the magistrate. Const. No. 1163.

The husband cannot be required to furnish security.

4697. Where the wife alleged that her husband was about to leave the country, it was held that the magistrate could not require security from him to maintain her. He should require the husband to enter into an engagement in writing to provide for his wife; and should punish any, and every, subsequent breach of such engagement distinctly complained of and proved, as a misdemeanor by imprisonment. Const. No. 992.

Power of assistants in such cases.

4698. Cases under the above provisions may be referred to principal sudder ameens [and, *semble*, to other officers exercising the primary powers of an assistant] for investigation and report. If such officers are vested with special powers they are competent to dispose of such cases. Const. No. 1265. C. O. No. 7 of vol. 4.

Not applicable to European British subjects.

4699. The provisions of sect. 4, Reg. VII. 1819 [and therefore of sect. 3 also] are not applicable to European British subjects as defendants. Const. No. 1141.

The magistrate cannot interfere to restore a wife to her husband; or a betrothed woman.

4700. The magistrates are invested with no authority to interfere with a view to restore a wife to her husband; applications of such a nature should be preferred in the civil court in the form of a regular suit. So, a magistrate was considered to have acted properly in refusing to interpose his authority to compel the delivery of a betrothed woman to a petitioner. And in a case of this nature, in which a magistrate had interfered, his order was rescinded, and the nizamut adawlut held, as a general rule, that all suits, or complaints, relative to marriage should be heard in the civil courts. C. O. No. 19 of vol. 3. *L. P.* Const. Nos. 148 and 725.

Magistrate may release a wife confined by her husband, and in dread of her life.

4701. Where a magistrate found a lady forcibly detained in a room in the zenana, and in dread of her life, and released her from confinement, allowing her to remove to an-

(a) This is strictly in accordance with Mahomedan law: according to which the amount of subsistence is to vary according to any change which may occur in the circumstances of the husband.

other place, the court held that he was justified in exercising such interference. Resolution N. A. No. 242, March 24, 1856. *L. P.*

Competency of magistrate to interfere in cases which involve the right of parents and others to the guardianship of children.

4702. Where a man of the Christian religion refused to resign the guardianship of a female child, aged two years, to its Hindu mother, with whom he had cohabited, but whom he had since dismissed with a maintenance of four rupees a month and a house for life; and she applied to the magistrate to obtain possession of the child for her: the nizamut adawlut held that he had no authority to interfere, and that the petitioner should be referred to the civil court. But more lately, where a magistrate referred the following questions for decision; viz.—1. Is any power vested in a magistrate under the regulations to compel a wife who has abandoned the society of her husband, or who has been abandoned by her husband, to restore to the husband the children begotten during the course of the marriage?—2. Is any power vested in a magistrate to compel a party, who, in the assumed character of guardian, next of kin, and the like, may have enticed away or carried off any infants from another party (under whose charge or in whose possession they were), to restore the infants to the prosecutor or into the court of the magistrate, that the magistrate may decide to whom the charge of the infants legally belongs?—and the sudder courts differed in opinion; the government on a reference did not concur in the opinion that a magistrate is not competent to exercise any interference; but, considering that in the decision of every case regard should be had to its particular circumstances, held that, until some definite rules should be prescribed for the guidance of the magistrate in these cases, the safest course would be to refrain from attempting to issue any general instructions, and to leave the several magistrates to exercise a sound discretion in exerting their official authority or not, according as the propriety of one or the other course might be indicated by the circumstances of each case. Const. No. 1060. C. O. No. 239 of vol. 2.

Bigamy.

4703. If a Mahomedan woman is charged with bigamy, the magistrate should enquire whether the marriages have been performed in a strictly legal manner under the Mahomedan law. It is within his option to punish the accused himself, or to commit the case to the sessions court, if he considers that the offence proved is deserving of a punishment beyond that which he is competent to inflict. Letter of N. A. to Judge of 24-Pergunnahs, No. 512, May 16, 1853.

Clandestine marriage of a female ward.

4704. Where a person clandestinely married a female ward (also a minor) placed under a guardian appointed by the sudder dewanny adawlut under Reg. I. 1800, without the consent of such guardian, and in opposition to the express orders of the civil court, it was held that no offence had been committed under the Mahomedan law, and consequently that the charge was not cognizable in the criminal court. Const. No. 637.

Magistrates and judges to point out to parents and others the danger of allowing children to go abroad with jewels and ornaments.

4705. Magistrates and session judges are to take every proper occasion, especially when the case of a child being murdered to obtain its jewels or ornaments comes officially before them, to impress upon the minds of parents, and other persons present in court, the danger to which children are exposed by the practice of allowing them to go abroad with jewels and ornaments, unless attended by persons able to protect them, and the consequent

imprudence and impropriety of their perseverance in a practice so often attended with effects as lamentable to themselves as fatal to the lives of their children.(a) C. O. No. 195 of vol. 1.

CHAPTER IV.

OF MASTERS AND SERVANTS, WORKMEN, AND CONTRACTS OF LABOR.

Workmen engaging to serve for a stipulated term, or contracting for the performance of a specific work, and wilfully quitting the service or neglecting to perform the work,—how punishable.

4706. All persons who voluntarily engage to serve as workmen of any description for a stipulated term, or who voluntarily contract for the performance of any specific work, and who, without good and sufficient cause, wilfully quit the service so engaged for before the expiration of the term agreed upon, or wilfully neglect to perform the work so contracted for, are to be deemed guilty of a misdemeanor; and on conviction before a magistrate, or joint magistrate, are liable to a sentence of imprisonment not exceeding one

(a) The following proclamation was ordered to be published at all the public cutcheries, and police thanas, the necessity for such a proclamation will be evident on a reference to the nature and number of cases quoted in para. 3979.—"It having come to the knowledge of government through various channels of information and particularly from the reports of the zillah and city magistrates, the courts of circuit, and superintendents of police, that frequent instances still occur in many parts of the territory subject to this presidency, especially in the Western provinces, of the murder of children for the purpose of obtaining their gold and silver ornaments; and the Honorable the Vice-President in council, being desirous of preventing as far as possible this atrocious and lamentable crime, so distressful to the parents and other relatives of the numerous children thus murdered from year to year, without having recourse to measures of a prohibitory and penal nature, which might interfere with established usages, and occasion loss of property or personal inconvenience; it is hereby notified by the court of nizamut adawlut, with the sanction of government, to all parents, guardians, and others, having the charge of young children whether of the Hindu or Mussulman religion, that whereas experience has shewn the great danger of robbery and murder to which children are exposed by being allowed to go abroad from the house of their parents or other persons, having the care of them, with gold or silver ornaments, especially when not attended by trustworthy persons capable of protecting them, it is the obvious duty of all parents and others intrusted with the care of children, to guard against such danger by removing the cause of temptation, and by not permitting any child under their charge to go from home with any gold or silver ornament, except in company with themselves, or with other persons on whom they can depend to guard against the possibility of any calamitous consequence which, they must be well aware, has too often ensued from a neglect of such precaution. The judges of circuit and the zillah and city magistrates have been further instructed to take every proper occasion of impressing upon the minds of parents and other persons, who may be present at criminal trials in cases of child-murder, the danger to which children are exposed by the imprudent practice of allowing them to go abroad with jewels and ornaments; and it is hoped, that the respectable inhabitants of the country, as well from feelings of natural affection, as from a sense of moral duty, will be induced to shew a strict and ready attention to such communications, as well as to the admonition contained in this notification, which can have no other object than to preserve the lives of many helpless children, and to prevent the distress of their relations from the loss of them. All parents and others having the care of children are accordingly hereby expected and enjoined to maintain by their example and influence, a careful observance of the precaution recommended to them in this proclamation, which it may be confidently expected will effectually check the prevalent crime adverted to, and thereby preclude the necessity of adopting any other remedy."

month. The magistrate or joint magistrate may likewise require the persons so convicted to complete their stipulated term of seevice, or to perform the work contracted for, if it appears just and proper to require the same; and any subsequent conviction of wilful neglect to comply with such requisition, is punishable by a further sentence of imprisonment not exceeding two months. Reg. VII. 1819, sect. 5.

So, domestic servants engaging for a fixed term, or a specific service, or employed from month to month.

4707. The provisions of the foregoing section are also declared applicable to domestic servants, who engage to serve for any fixed term; or during the performance of any specific service; or, though no such engagement has been entered into, are employed from month to month; and without good and sufficient cause wilfully quit the service of their employers before the expiration of the fixed term; or before the completion of the stipulated service; or, with respect to monthly servants, before giving previous notice for a period not less than fifteen days. Reg. VII. 1819, sect. 6, cl. 1.

Beyond the prescribed punishment, the magistrate can take no measure to compel the performance of the work engaged for.

4708. The sentence of two months' imprisonment prescribed above, in cases of workmen neglecting to finish their work, is intended as a punishment for wilful neglect to perform work undertaken, and not as a means of compelling the performance of it; and consequently the magistrate is not competent to repeat the punishment of two months' imprisonment, or to take any further measure towards compelling an actual performance of the work engaged for. Const. No. 384.

There must be a stipulated term, or a contract for a specific work.

4709. There must be a stipulated term of service, or a contract for the performance of a specific work, to render the above provision applicable to the case of mistris, mochis, or other artizans, who have taken advances from their employers and agreed to work for the same. Such cases may be prosecuted either in the district in which the agreement was executed, or in that in which the defendant resides. Const. No. 1329.

Venue.

This does not apply to a mokhtar;

4710. The above provisions were never intended to have, nor have, any reference to the wages of a mokhtar; they apply to workmen and domestic servants only. Const. No. 770.

or to a gomashtah superintending an out-factory;

4711. The gomashtah of an indigo planter, superintending an out-factory, cannot be considered as a domestic servant, or as a workman. The above provisions therefore are not applicable to such a case. (a) Const. No. 924.

or to a village chokeedar.

4712. These provisions do not apply to village chokeedars; and the realization of their wages under them is illegal. Reports *L. P.* 1854, part 1, page 260.

Nor is it applicable to contracts for the supply of hakeris and bullocks.

4713. The above provisions are not applicable to the enforcement of contracts for furnishing hakeris and bullocks under engagements to indigo planters; but they may be applied in the case of the driver of a hakeri and cattle, his own property, who engages therewith to perform certain work, and wilfully neglects or refuses to fulfil his engagement. C. O. Nos. 186 and 187 of vol. 2.

(a) It was held at the same time that the provisions of sect. 20, Reg. VII. 1799 (which refer to native agents employed by landholders and farmers in the management of their estates or farms, or collection of their rents) are equally inapplicable to the gomashtahs and mohurirs of indigo-planters.

Beparis in the service of government suing for arrears of wages, to be referred to civil court.

4714. The complaints of beparis for the adjustment of their claims for the hire of their hakeris and bullocks, while in the service of government, are not cognizable by the magistrate, but should be preferred in the civil court. Const. No. 560.

A contract with security to convey goods to a certain place cannot be enforced under these provisions.

4715. Where A entered into a contract with B, on the security of C and D, for furnishing a boat to convey certain goods of A to a fixed place, and afterwards B unloaded the goods, and refused to carry them on according to his agreement, it was held, that, as the contract was of a purely civil nature, and as security was taken for the performance of it, the above provisions did not apply; and that the person aggrieved must seek his remedy in the civil court. Const. No. 1085.

Rule to control the discharge of servants in certain cases.

4716. In like manner no master, or other person, employing a servant for a fixed term, or for a specific service, or from month to month, is at liberty, without good and sufficient cause, to discharge such servant, against his will, before the expiration of the fixed term; or the completion of the specified service; or, with respect to servants employed from month to month, without giving previous warning of the intended discharge for a period of at least fifteen days, or paying his wages for that period. Reg. VII. 1819, sect. 6, cl. 2.

What award the magistrate is to make in such cases.

4717. It is the duty of the magistrates and joint magistrates, on applications made to them upon the prescribed stampt paper, to enforce the provisions of the above clause by causing payment to be made to any servant, who is discharged in opposition thereto, of a sum equal to half a month's wages, in addition to any arrear of wages which is due to him at the time of his discharge; or if the servant has been engaged for a fixed term, or for a specific service, by causing payment to be made to him of such sum as appears fully adequate to any loss sustained by him from being discharged before the time agreed upon. Reg. VII. 1819, sect. 6, cl. 3.

Proviso in case of misconduct of servant; and where the servant or workman is ill-treated, or has other sufficient cause for leaving the service.

4718. Provided however, that no servant is to be entitled to recover more than his arrear of wages, when he is discharged for any misconduct proved to the satisfaction of the magistrate or joint magistrate, and appearing sufficient to warrant his discharge. Nor is any workman or servant to be liable to punishment under the provisions of this regulation, when it is proved to the satisfaction of the magistrate or joint magistrate, that his quitting the service of his employer, without previous notice, or before the expiration of a stipulated term, or without having completed the performance of any work contracted for, was occasioned by gross mal-treatment, or by non-payment of wages due, or by any other cause which appears to the magistrate or joint magistrate sufficient to justify or excuse the act complained of. Reg. VII. 1819, sect. 6, cl. 4.

Complaints for arrears of wages ought to be made within a year, and preferred on oath.

4719. The intention of the above provisions evidently is, that the complaint for the recovery of wages should be made immediately on the occurrence of the cause of complaint; *i. e.* within the period of one year; a case therefore in which nearly two years and a half had elapsed, was considered not properly cognizable by the magistrate. Such complaints, like all other complaints in a criminal court, must be preferred on oath. Const. No. 582. The sum which may be recovered in the criminal court

as wages, is not limited by the above provisions: and, under the last quoted construction, the servant may sue in the criminal court to recover wages for any period not exceeding one year. Const. No. 913. Comparing the two foregoing constructions, it appears that claims for wages under Reg. VII. 1819 should ordinarily be brought within a year from the time the wages become due. No period being, however, fixed by law, the court cannot lay down a positive rule of limitation in the matter. It rests with the deciding authorities to dispose of each case on its merits, according to the special circumstances of it, advertence being had to any excessive delay in preferring the claim, as to other points involved in it. Letter of N. A. to Judge of Tirhoot, No. 1331, Nov. 30, 1849.

Any amount of wages not exceeding arrears for one year may be recovered.

But the period is not fixed by law, and is therefore left to discretion.

4720. In the event of parties, against whom an award for arrears of wages to domestics passed under the above provisions is given, not immediately paying the same, the magistrate should proceed to levy the amount by the distress and sale of the defendant's personal property. Const. No. 1053.

Award how to be enforced.

4721. Assistants vested with special powers are competent to dispose of cases under the above provisions: and such cases may be referred to principal sudder ameens [and, *semble*, to other officers exercising the primary powers of an assistant] for investigation and report. C. O. No. 7 of vol. 4. Const. No 1265.

Powers of assistants in such cases.

4722. In all cases in which it has been the intention of the legislature to render a summary decision subsidiary to a suit in the civil court, the regulations contain specific provision to that effect; as for instance in cases coming under the provisions of Reg. XV. 1824.* No such provision is however made as regards cases of the nature of those specified in sect. 6, Reg. VII. 1819; and therefore cases decided by the criminal authorities under the rules laid down in that section are not open to a civil action. The civil court of course can have no power to issue an injunction to a magistrate for the purpose of stopping execution of his order. Const. No. 1158.

Cases decided by the criminal authorities under these provisions are not open to a civil action; nor can the civil court interfere with the magistrate's order.

* *Now Act IV.* 1840.

4723. The rule contained in cl. 3, sect. 6, Reg. VII. 1819, cannot be considered applicable to European British subjects; and consequently a magistrate, even though a justice of the peace, cannot compel such person to pay the wages of a servant. (*a*) Yet the magistrate may, at the suit of a European British subject, proceed against native servants or workmen quitting their employment, &c. Const. Nos. 340 and 345.

How far these provisions are applicable to European British subjects.

(*a*) But the magistrate, whether he is a justice of the peace or not, may take cognizance of such complaints against European British subjects, under the provisions of 53 George III. cap. 155, sect. 106. *See para.* 4625.

CHAPTER V.

OF INSANE PERSONS.

Note.—For rules regarding crimes committed by insane persons, and the custody of persons acquitted on the ground of insanity, see page 31 *et seq.*

Wandering and dangerous lunatics to be sent to the magistrate.

Certificate and order for reception in asylum.

4724. It shall be the duty of every darogah or district police officer to apprehend and send to the magistrate all persons found wandering at large within his district who are deemed to be lunatics, and all persons believed to be dangerous by reason of lunacy. Whenever any such person as aforesaid is brought before a magistrate, the magistrate, with the assistance of a medical officer, shall examine such person, and if the medical officer shall sign a certificate in the form A in the schedule to this Act(*a*), and the magistrate shall be satisfied on personal examination or other proof that such person is a lunatic and a proper person to be detained under care and treatment, he shall make an order for such lunatic to be received into the asylum established for the division in which the magistrate's jurisdiction is situate; or, if such lunatic is not a native of the country and the circumstances of the case so require, into a lunatic asylum at the presidency; and shall send the lunatic in suitable custody to the asylum mentioned in such order. Provided that, if any friend or relative of any lunatic, who is believed to be dangerous, shall undertake in writing to the satisfaction of the magistrate that such lunatic shall be properly taken care of, and shall be prevented from doing injury to himself or others, the magistrate, instead of sending him to an asylum, may make him over to the care of such friend or relative. Provided also that, if any such friend or relative shall desire that the lunatic may be sent to a licensed asylum instead of the public asylum of the division, and shall engage in writing to the satisfaction of the magistrate to pay the expenses which may be incurred for the lodging, maintenance, medicine, clothing, and care of the lunatic in such asylum, the magistrate may send the lunatic to the licensed asylum mentioned in the engagement. Act XXXVI. 1858, sect. 4.

In certain cases, a lunatic may be committed to the care of his friends or relatives;

or sent to a licensed asylum.

In case of neglect or cruel treatment of a lunatic,

4725. If it shall appear to the magistrate, on the report of a police officer or the information of any other person, that any person within the limits of his jurisdiction

(*a*) FORM A.

CERTIFICATE OF MEDICAL OFFICER.

I, the undersigned, (*here enter name and official designation,*) hereby certify that I, on the day of at , personally examined (*here enter name and residence of lunatic*), and that the said is a lunatic (*or an idiot or a person of unsound mind*) and a proper person to be taken charge of, and detained under care and treatment, and that I have formed this opinion on the following grounds namely:—

1. Facts indicating insanity observed by myself (*here state the facts*).

2. Other facts (if any) indicating insanity communicated to me by others (*here state the information and from whom*).

(Signed)

deemed to be a lunatic is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the charge of him, the magistrate may send for the supposed lunatic, and summon such relative or other person as has or ought to have the charge of him; and if such relative or other person be legally bound to maintain the supposed lunatic, the magistrate may make an order for such lunatic being properly cared for and treated; and, if such relative or other person shall wilfully neglect to comply with the said order, may commit him to jail for a period not exceeding one month. If there be no person legally bound to maintain the supposed lunatic, or if the magistrate think fit so to do, he may proceed as prescribed in the last preceding section, and, upon being satisfied in manner aforesaid that the person deemed to be a lunatic is a lunatic and a proper person to be detained under care and treatment, may make an order for his reception into such asylum as aforesaid. It shall be the duty of every darogah or district police officer to report to the magistrate every such case of neglect or cruel treatment as aforesaid which may come to his knowledge. Act XXXVI. 1858, sect. 5.

magistrate may order relative, or person bound to maintain him, to provide for the proper treatment of such lunatic.

If no person bound to maintain him, magistrate may make an order for his reception in asylum

Darogah to report every such case of neglect.

4726. All acts which the magistrate is authorized or required to do by the two last preceding sections, may be done in the presidency towns and the stations of the Straits settlement by the commissioner of police; and all duties which a darogah or district police officer is authorized or required to perform may be performed in any of the said towns and stations by an officer of the police force not below the rank of inspector. Act XXXVI. 1858, sect. 6.

Commissioner of police, &c., to act in the presidency towns and Straits settlement.

4727. Except as otherwise hereinbefore provided, no person shall be received into a lunatic asylum in any presidency town or in any station of the Straits settlement without an order under the hand of some person in the Form B in the schedule to this Act(*b*), to-

Order and certificate for reception into an asylum in presidency towns and Straits settlement

(*b*)

FORM B.

ORDER FOR THE RECEPTION OF A PRIVATE PATIENT.

I, the undersigned, hereby request you to receive A. B., a lunatic [*or an idiot, or a person of unsound mind*], as a patient into your asylum. Subjoined is a statement respecting the said A. B.

(Signed) Name,
Occupation (if any)
Place of abode.
Degree of relationship (if any), or other circumstance of connection with the patient.
Dated this day of one thousand eight hundred and
To Superintendent of the asylum at [*describing the asylum*]

STATEMENT.

[*If any of the particulars in this Statement be not known, the fact to be so stated.*]

Name of patient, with Christian name at length.
Sex and age.
Married, single, or widowed.
Condition of life, and previous occupation (if any).
The religious persuasion, as far as known.
Previous place of abode.
Whether first attack.

gether with such statement of particulars as is contained in the said Form B; nor, unless such person has been found lunatic by inquisition or under an enquiry directed by an order of one of the courts of judicature established by royal charter, without the medical certificate, containing the particulars in Form A in the schedule to this Act, of two persons each of whom shall be a physician or surgeon and one of whom shall be a presidency surgeon or a surgeon in the employment of the government. When such order is presented, the visitors or manager of the asylum, before admitting the lunatic into the asylum, may require the friends of the said lunatic to engage to pay the expenses which may be incurred for the lodging, maintenance, clothing, medicine, and care of the lunatic, unless it shall appear to the said visitors that they have not sufficient means of doing so. Act XXXVI. 1858, sect. 7.

In other places no person to be received into asylum without order of civil court.

4728. In places other than those specified in the last preceding section no person shall be received into a lunatic asylum, except as otherwise hereinbefore provided, without an order of the civil court. Act XXXVI. 1858, sect. 8, cl. 1.

Application for order to be made by a guardian, if a guardian has been appointed

4729. When any person has been adjudged to be a lunatic, and a guardian for such lunatic has been appointed by the court of wards or the collector or by the civil court, if such guardian shall desire that the lunatic be admitted into a lunatic asylum, he shall make application to the civil court, and the judge, with the assistance of a medical officer, shall examine such lunatic, and if the medical officer shall sign a certificate in the Form A in the schedule to this Act, and the judge shall be satisfied that the lunatic is a proper person to be detained under care and treatment in a lunatic asylum, he shall make an order for such person to be received into the asylum established for the division in which his jurisdiction is situate, or, if he think fit, into any licensed asylum mentioned in the application. Act XXXVI. 1858, sect. 8, cl. 2.

Application where no guardian has been appointed.

4730. If any relative or friend of any person for whom a guardian has not been appointed by the court of wards or the collector or by the civil court, desires that such

Age (if known) on first attack.
When and where previously under care and treatment.
Duration of existing attack.
Supposed cause.
Whether subject to epilepsy.
Whether suicidal.
Whether dangerous to others.
Whether found lunatic by inquisition or enquiry under order of court, and date of commission or order for inquisition or enquiry.
Whether any member of patient's family has been or is affected with insanity.
(Signed) Name.
[*Where the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added*; *namely*,]
Occupation (if any).
Place of abode.
Degree of relationship (if any), or other circumstances of connection with the patient.

person may be admitted into a lunatic asylum, he may make application to the civil court; and the judge, if he see sufficient reason for so doing, shall enquire into the fact of lunacy in the same manner as if an application had been made to the civil court under the provisions of section 3, Act XXXV. 1858; and if the lunacy be established, the judge may then proceed in the manner prescribed in the second clause of this section. Act XXXVI 1858, sect. 8, cl. 3.

Order for payment of expenses.

4731. Whenever the judge shall make an order for the reception of any person into a lunatic asylum, he shall, at the same time, make an order for the payment of the expenses to be incurred for the lodging, maintenance, clothing, medicine, and care of such person; and such expenses shall be recovered by the judge on the application of the visitors or manager of such asylum. Provided however that, if it shall appear to the satisfaction of the judge that the lunatic has not sufficiet property and that no person legally bound to maintain the said lunatic has sufficient means for the payment of such expenses, he shall certify the same in the order for the reception of the lunatic into the asylum, instead of making such order for the payment of expenses as aforesaid. Act XXXVI. 1858, sect. 8, cl. 4.

If the lunatic and person bound to maintain him have not sufficient means.

Order of discharge from asylum.

4732. It shall be lawful for three of the visitors of any asylum, of whom one shall be a medical officer, by writing under their hands, to order the discharge of any person detained in such asylum. When such order is given, if the person is detained under the order of any public officer, notice of the order of discharge shall be immediately communicated to such officer. Act XXXVI. 1858, sect. 9.

Order of discharge on undertaking of relative for due treatment of the lunatic.

4733. When any relative or friend of a lunatic detained in any asylum under the provisions of section 4, section 5, or section 6 of this Act, is desirous that such lunatic shall be delivered over to his care and custody, he shall make application to the magistrate or commissioner of police under whose order the lunatic is detained; and the magistrate or commissioner of police, if he think fit, after communication with the visitors or with one of them being a medical officer, and upon the undertaking in writing of such relative or friend to the satisfaction of the said magistrate or commissioner that such lunatic shall be properly taken care of and shall be prevented from doing injury to himself or others, shall make an order for the discharge of such lunatic, and such lunatic shall thereupon be discharged: Act XXXVI. 1858, sect. 10.

Inspector of jail may make order of removal from one public asylum to another.

4734. The inspector of jails may direct the removal of any lunatic from any public asylum to any other public asylum within the circle of his inspection, and such order shall be sufficient authority for the removal of such lunatic, and also for his reception into the asylum to which he is ordered to be removed. Act XXXVI. 1858, sect 11.

Amendment o order or certificate

4735. If, after the reception of any lunatic into any asylum, it appear that the order or the medical certificate or certificates upon which he was received is or are defective or incorrect, the same may at any time afterwards be amended by the person or persons signing the same with the sanction of two or more of the visitors of the said asylum, one of whom shall be a medical officer. Act XXXVI. 1858, sect. 12.

Order and certificate to justify detention and re capture after escape.

4736. Every person received into a lunatic asylum under any such order as is required by this Act accompanied by the requisite medical certificate, may be detained therein until he be removed or discharged as authorized by this Act, and in case of escape may, by virtue of such order, be re-taken by the manager of such asylum, or any officer or servant belonging thereto, or any other person authorized in that behalf by the said manager, or any police officer, and conveyed to and received and detained in such asylum. Act XXXVI. 1858, sect. 13.

In what cases government to pay for the maintenance of lunatic.

4737. When any lunatic is sent to a licensed asylum by order of a magistrate or commissioner of police under section 4, section 5, or section 6 of this Act, and when a lunatic is admitted into such asylum under section 7, or an order for the reception of a lunatic is made under section 8, and no engagement has been taken from the friends of the lunatic or order made by the judge for the payment of expenses under the said section 7 or section 8 respectively, the expense of the lodging, maintenance, clothing, medicine, and care of such lunatic shall be paid by the government to the manager of such asylum. Act XXXVI. 1858, sect. 14.

Civil court, on application of magistrate, may make order for the payment of cost of maintenance out of the lunatic's estate, or by person bound to maintain him.

4738. The magistrate or commissioner of police by whom any lunatic has been sent to a lunatic asylum, if it appear to such magistrate or commissioner that such lunatic has an estate applicable to his maintenance and more than sufficient to maintain his family, or that any person is legally bound to maintain and has the means of maintaining such lunatic, may apply to the chief civil court of original jurisdiction within the local jurisdiction of which the estate of the lunatic may be situate or the person legally bound to maintain him may reside, and such court shall enquire into the matter in a summary way, and on being satisfied that such lunatic has an estate applicable to his maintenance, or that any person is legally bound to maintain and has the means of maintaining such lunatic, shall make an order for the recovery of the charges of the lodging, maintenance, clothing, medicine, and care of such lunatic out of such estate or from such person. Such order shall be enforced in the same manner and shall be of the same force and effect and subject to the same appeal as any judgment or order made by the said court in a regular suit in respect of the property or person therein mentioned. Any personal property which may be in the possession of a lunatic found wandering at large may be sold by the magistrate and the proceeds thereof (or such part of the same as may be necessary) applied towards the payment of the charges of the lodging and maintenance of the lunatic, and of any other expenses incurred on his behalf. Act XXXVI. 1858, sect. 15.

Enforcement, &c. of order.

Property in the possession of a lunatic found wandering.

Saving of liability of relatives to maintain lunatic.

4739. The liability of any relative or person to maintain any lunatic shall not be taken away or affected by any provision contained in this Act. Act XXXVI. 1858, sect. 16.

Saving of powers of supreme court, &c., and of Act IV 1849.

4740. Nothing contained in this Act shall be taken to interfere with the power of any of the courts of judicature established by royal charter over any person found to be lunatic by inquisition or under the provision of Act XXXIV. 1858, or with the rights of any committee of the person or estate of such lunatic, or to affect the provisions of Act IV. 1849. Act XXXVI. 1858. sect. 17.

Interpretation, "lunatic;" "magistrate."

4741. The word "lunatic," as used in this Act, shall mean and include every person of unsound mind, and every person being an idiot. The word "magistrate" shall include a person exercising the powers of a magistrate. Act XXXVI. 1858, sect. 18.

CHAPTER VI.

OF COVENANTED OFFICERS.

Officers are prohibited from employing their private servants in the execution of any public duty;

4742. The whole of the officers of government, employed in the judicial department, civil or criminal, are prohibited, under pain of dismissal from office, from employing directly or indirectly, their private servants of whatever description, or any other persons not being public officers duly appointed or nominated in conformity with the rules in force relative to such appointments, in the discharge of any part of their public duties, or in the execution of any public duty, in which the person so employed has not been duly authorized to act.* Reg. VIII. 1825, sect. 2, cl. 1.

* *This does not apply to copies made for the use of private individuals. See para.* 1914.

and from employing public officers (not being peons) in the execution of their private business.

4743. The whole of the judicial officers are, in like manner and under the same penalty, prohibited from employing any of the public officers on their establishments (not being peons, or other inferior servants, in personal attendance upon a judge, magistrate, or other officer of government in the judicial department) in the performance of any part of their private business, or in the execution of any private trust relating to their personal concerns. Reg. VIII. 1825, sect. 2, cl. 2.

Covenanted officers are not to lend money to landholders;

4744. The session judges, and magistrates, and their assistants, or other officers being covenanted servants of the government, are prohibited from lending money, directly or indirectly, to any proprietor or farmer of land, or dependant zumeendar, or under-farmer, or ryot, or their sureties; and all loans made in opposition to this prohibition are declared irrecoverable in any court of judicature. *Beng.* Reg. XXXVIII. 1793, sect. 2. *Ben.* Reg. XLVIII. 1795, sect. 2. *Ced. Prov.* Reg. XIX. 1803, sect. 2.

or to incur debt to any native officer under their authority, or to any one personally connected with such officer;

4745. All covenanted civil servants, in whatever department of the public service they may be employed, are prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any native officer under their authority, or under the authority of any of their subordinate functionaries, or from or to the known surety, agent, relation, connection, or dependant of any such native officer, or from or to any person of whom such native officer may be known to be or to have been the servant, agent, surety, or dependant. Reg. VII. 1823, sect. 2, cl. 1.

or to any person officially accountable to them;

4746. In like manner and under the like penalty, all officers of government, being covenanted civil servants, are prohibited from borrowing from, or in any way incurring debt to, any manager, guardian, executor, ameen, sezawul, gomastah, farmer, mutawalli, or other person who may in any way be officially accountable to them, or from and to the known surety, agent, relation, connection, or dependant of such person. Reg. VII. 1823, sect. 2, cl. 2.

or to any person residing in, or having property within, their districts.

4747. All judges, magistrates, and assistants to magistrates, are prohibited, under pain of dismissal from office, from borrowing money from, or in any way incurring debt to, any zumeendar, talookdar, ryot, or other person possessing real property, or residing in, or having a commercial establishment within the city, district, or division, to which their authority extends. Reg. VII. 1823, sect. 3.

No money is to be lent to such officers contrary to the above rules, under pain of a certain penalty.

4748. All persons are prohibited from lending money, or otherwise becoming in any way creditor to any officer of government, being a covenanted civil servant, in contravention of the above rules: and any person lending money, or in any way becoming creditor, to any such public officer in breach of this prohibition, is to forfeit to government a sum equal to the amount for which he has so illegally become creditor. Reg. VII. 1823, sect. 4.

Officers receiving new appointments if indebted to any individual, contrary to the above rules, to report.

4749. If any covenanted servant, who may be hereafter appointed to any office, shall at the time of such appointment be indebted to any person with whom it would be illegal for him to contract a loan, while holding such office, it shall be incumbent on such servant, before entering on the duties of such office, to make known the circumstance to government; and failing to do so, he is to be subject to the same penalty, as if the debt had been contracted subsequently to his being appointed to the said office. Reg. VII. 1823, sect. 6.

No person being a creditor of any officer is to be appointed to any official situation on his establishment.

4750. No person being a creditor of any judge or magistrate is to be appointed to any official situation on the establishment of the person whose creditor he is. It is consequently the duty of the superior authorities, on receiving the prescribed reports, to satisfy themselves fully that the natives, recommended to fill any vacancies on the establishments of the European officers acting under their control respectively, are not the creditors of the latter. With this view it is the duty of such authorities to make full inquiries on the subject, not only from the officers from whom such reports are received, but through such other channels as are necessary to guard against any infringement or evasion of these provisions. Reg. XXI. 1814, sect. 2.

Precautions to be taken against such appointments.

This rule applicable equally to the relatives and dependants of such creditors.

4751. The rules contained in the preceding section, for precluding the creditors of the public officers above-mentioned from being employed on their public establishments, are to be considered equally applicable to the relatives and dependants of such creditors: the former as well as the latter are consequently equally precluded from being employed on the establishments of any of the public officers above described. Reg. XXI. 1814, sect. 3.

Penalty on natives knowingly taking office in contravention of these rules.

4752. Any native causing himself to be appointed to any office in opposition to the provisions of Reg. XXI. 1814, or in any way knowingly accepting office in contravention thereof, is to forfeit to government a sum equal to ten times the yearly salary or allowances attached to the situation, to which he is appointed. Reg. VII. 1823, sect. 7.

Penalties to be enforced by prosecution at the suit of government.

4753. Suits for the recovery of penalties incurred under this regulation are to be instituted under the special instructions of government, and are to be conducted by the superintendent and remembrancer of legal affairs, or by such other officer as government may nominate for that purpose; such suits are to be instituted in the provincial court of the jurisdiction within which the transaction has taken place, or the lender resides, or possesses real or personal property. An appeal lies from judgments passed in such cases, in like manner as from other judgments passed in original suits by the provincial courts;

and the judgments are to be enforced under the provisions of the regulations for the execution of other decrees of the civil courts. Reg. VII. 1823, sect. 8.

Allowances granted for specific purposes.

4754. Where an officer continued for many months to draw a sum of money granted for a specific object, when that object had been otherwise provided for, and thus appropriated to his own use a sum to which he had no title in as much as it should have been immediately saved to the state, the Court of Directors, after severely censuring the conduct of the officer in question, intimated that any such delinquencies would in future be punished by dismissal from the service of government. C. O. Sup. Pol. *L. P.* No. 4 of 1851. C. O. No. 62 of vol. 4. *L. P.*

Sales to natives of rank or opulence forbidden.

4755. Officers of government, of whatever rank or class, are absolutely prohibited from selling, or being concerned in the sale of, property of any amount or description to native princes and chiefs, or to their relatives or ministers, or to any native gentleman of rank or opulence, residing under the protection of the British government. Any disobedience of these orders will be followed by the displeasure of government, and by such other penalty as the circumstances of the case may demand. Notification of the Government of India, No. 3200, July 25, 1854.

Borrowing boats &c. from natives.

4756. Persons in public authority are not to borrow boats, elephants, &c. from the natives: a commissioner of circuit was considered to have been rightly censured for applying to a zumeendar for the gratuitous use of his budgerow. Letter from the Court of Directors, December 23, 1833.

Nazars are prohibited.

4757. The custom of natives presenting nazars in money, trays of fruit, and other articles, on the occasion of their paying official or complimentary visits to public functionaries in the service of the government, is strictly prohibited: and such officers are to adopt every measure within their power to make this prohibition generally known and obeyed by all natives of whatever rank or degree, with whom they have official or private intercourse. Govt. Resolution, June 2, 1829.

Receipt of complimentary addresses forbidden.

4758. All officers of government are prohibited from receiving complimentary addresses from parties with whom they have been officially connected. C. O. Sup. Pol. *L. P.* No. 9 of 1851. C. O. No. 69 of vol. 4. *L. P.*

Private trading.

4759. Members of the civil service may become shareholders in Assurance and other companies; but, as the occupations of a private institution cannot be allowed to interfere with the claims of the public service to the undivided attention of the servants of government, they are positively interdicted from taking any part in the management of such companies. This interdict does not, however, apply to the Asiatic, the Agricultural, or other such Societies, which cannot in any way be looked upon as trading establishments. See Bengal and Agra Guide, 1842, vol. 1, part 1, page 304.

Private disputes interfering with the due discharge of public duties.

4760. The following is an extract from an order of government, dated September 5, 1839.—"It remains for the governor general to express his general sentiments on a point which has evidently been instrumental in producing dissensions between officers, whose bounden duty to the government which they serve, it was, and always must be, to merge all personal feelings and official pretensions in zeal for the public interest. The matter to

which his lordship alludes is that tenaciousness of their own authority and readiness to interfere with the authority of other distinct functionaries, which make those, who are most sensitive of any encroachment on their own power and prerogative, the very persons likely to infringe the just and proper authority of others. To cavil about trifles in the intercourse of official life, betrays not more the absence of generous and highminded principles, than a readiness to postpone to selfish considerations the performance of duties owing to the state. Every indulgence in harsh and acrimonious language in official correspondence falls under this censure, and no one can in any degree give way to it without losing somewhat of the confidence, which government would otherwise have placed in his judgment and discretion, as detracting from his trustworthiness, and even lessening his claims to high and confidential employment. The government has the strongest reason to expect that every one of its servants, to whom it confides the discharge of responsible duties, will, from the moment of assuming such charge, discard all private feelings of pique and animosity, that may interfere with the impartial and unprejudiced performance of public duty, and will manifest a spirit superior to the influences of party or personal motives. Those who appear ready to sacrifice their public duty to the indulgence of private resentment, can have little right to look for future patronage or distinction."

Friendly intercourse required to be cultivated with respectable Europeans and natives.

4761. All officers ought to cultivate a friendly intercourse with persons of respectability and influence, both European and native, residing in the district. Without prescribing the precise manner in which such intercourse may best be carried on, government desires to impress the officers of the covenanted service with a sense of the peculiar obligation they are under to show courtesy and attention towards all who are brought in connection with them, and not only to feel an interest in the improvement and prosperity of the district and its inhabitants, but to take the lead in all measures designed for promoting those objects. Order Govt. Bengal, April 21, 1854.

Reports on the official character and conduct of the several public functionaries.

4762. The following rules for reporting on the official character and conduct of the several public functionaries were promulgated for the information and guidance of all officers. The objects in view are: firstly, the carrying into effect the principle of enforcing responsibility in all superior functionaries for the incapacity, or neglect, or wrongs committed by the civil servants under them, unless they are, as the cases may admit, either redressed or reported to government; secondly, the bringing to the knowledge of government all instances of eminent merits and qualifications amongst its covenanted officers of all ranks; so that the government may be enabled, generally, to reward merit, to stimulate exertion, and to secure to the public service for vacant offices the best qualifications available.—In hearing appeals and cases sent from the sessions courts, every judge of the nizamut adawlut is to note, as each case proceeds, any points that strike him as affecting materially the character of the court below; and whenever, at the conclusion of a case, any judge is of opinion that the proceedings of such a court have been either remarkably well, or remarkably ill conducted, it is his duty to make a note thereon for the consideration of the court collectively at their English sitting. The court is to determine in what manner these notes may best be made available, in the preparation of their annual report,

The individual judges of the nizamut adawlut are to furnish notes on the cases submitted by the session judges; and the collective opinion of the court is to be expressed in their annual report.

for the expression of their collective opinion on the quality of the business performed by every session judge. The nizamut adawlut is required to make a special report on the subject of any zillah, in which they are of opinion that the state of business is such as to make it desirable, for the sake of the public interests, that measures should be immediately taken to remedy the evil. In cases of less importance, it is the duty of the court to notice in their annual report any serious defect which they believe to exist in the administration of justice in any district, under their jurisdiction.—It is the duty of the several commissioners of circuit to report, in their periodical police returns, their opinions on the general efficiency of the police of each district under their superintendence, and on the manner in which the various business in this department has been performed by each of the officers among whom it is distributed. It is also the duty of each commissioner to notice prominently in these reports the extent to which the services of the assistants to the magistrates and joint magistrates in his division have been employed, and the consequences of such employment, in order that the application and abilities of the several officers in the junior grades of the service may be brought distinctly under the view of the government.—It is the duty of the sudder court, of the commissioners, and of the magistrates and joint-magistrates, to report to their immediate superior every case in which they are of opinion that a covenanted officer, subordinate to them, is decidedly disqualified to discharge efficiently the duties entrusted to him; and it is hereby notified to all such functionaries that it is considered an essential part of their duty to make themselves acquainted with the manner in which their subordinate officers perform their duties, and that they themselves will be held responsible for any mischievous consequences that may result from any inefficiency, bad habits, or serious errors of conduct of those under them, that ought to have been known to them, unless they report the same for the information of their superiors. Govt. Notification, December 20, 1836. C. O. *W. P.* No. 222, *L. P.* No. 227 of vol. 2.

In special cases an immediate report of the state of any zillah is to be submitted to government: otherwise, serious defects are to be noted in the annual report.

Reports on the state of the police

All officers are to report if a subordinate is decidedly disqualified to discharge his duties efficiently: if they fail to report they are themselves to be held responsible.

4763. Officers submitting explanations from their subordinates are invariably to state whether they consider the same to be sufficient and satisfactory, or otherwise. C. O. No. 219 of vol. 2.

Opinion to be expressed of explanations from subordinates.

Charges against.

4764. Whenever the government shall be of opinion that there are good grounds for making a formal and public inquiry into the truth of any imputation of misbehaviour by any person in the service of the government not removable from his office without the sanction of the government, it shall cause the substance of the imputations to be drawn into distinct articles of charge, and shall order a formal and public inquiry to be made into the truth thereof. Act XXXVII. 1850, sect. 2.

Government may draw up distinct charges, and order a public enquiry.

4765. The inquiry may be committed either to the court, board, or other authority to which the person accused is subordinate, or to any other person or persons to be specially appointed by the government commissioners for the purpose: notice of which commission shall be given to the person accused ten days at least before the beginning of the inquiry. Act XXXVII. 1850, sect. 3.

By whom the enquiry is to be conducted.

Notice to the accused.

4766. When the government shall think fit to conduct the prosecution, it shall nominate some person to conduct the same on its behalf. Act XXXVII. 1850, sect.

Government prosecutor

Accuser to reduce accusation to writing and to verify it by his oath.

4767. When the charge shall be brought by an accuser, the government shall require the accusation to be reduced to writing, and verified by the oath or solemn affirmation of the accuser, and every person who shall wilfully and maliciously make any false accusation under this Act, upon such oath or affirmation, shall be liable to the penalties of perjury: but this enactment shall not be construed to prevent the government from instituting any inquiry, which it shall think fit, without such accusation on oath or solemn affirmation as aforesaid. Act XXXVII. 1850, sect. 5.

Accuser to give security, if the conduct of the prosecution is left to him.

4768. Where the imputations shall have been made by an accuser, and the government shall think fit to leave to him the conduct of the prosecution, the government before appointing the commission shall require him to furnish reasonable security that he will attend and prosecute the charge thoroughly and effectually, and also will be forthcoming to answer any counter-charge or action which may be afterwards brought against him for malicious prosecution or perjury or subornation of perjury, as the case may be. Act XXXVII. 1850, sect. 6.

Government may abandon, and accuser continue prosecution at any stage.

4769. At any subsequent stage of the proceedings, the government ... think fit, abandon the prosecution, and in such case may, if it think fit, on the application of the accuser, allow him to continue the prosecution, if he is desirous of so doing, on his furnishing such security as is hereinbefore mentioned. Act XXXVII. 1850, sect. 7.

Commissioner's power in case of contempt, and in summoning witnesses &c.

4770. The commissioners shall have the same power of punishing contempts and obstructions to their proceedings, as is given to civil and criminal courts by Act XXX. 1841, and shall have the same powers for the summons of witnesses, and for compelling the production of documents, and for the discharge of their duty under the commission, and shall be entitled to the same protection, as the zillah and city judges; except that all process to cause the attendance of witnesses, or other compulsory process, shall be served through and executed by the zillah or city judge, in whose jurisdiction the witness or other person resides, on whom the process is to be served; and if he resides within Calcutta, Madras, or Bombay, then through the supreme court of judicature there. When the commission has been issued to a court, or other person or persons having power to issue such process in the exercise of their ordinary authority, they may also use all such power for the purposes of the commission. Act XXXVII. 1850, sect. 8.

Penalty for disobeying process.

4771. All persons disobeying any lawful process issued as aforesaid for the purposes of the commission shall be liable to the same penalties, as if the same had issued originally from the court or other authority, through whom it is executed. Act XXXVII. 1850, sect. 9.

Copy of charge &c., to be given to accused.

4772. A copy of the articles of charge, and list of the documents and witnesses by which each charge is to be sustained, shall be delivered to the person accused, at least three days before the beginning of the enquiry, exclusive of the day of delivery, and the first day of the inquiry. Act XXXVII. 1850, sect. 10.

Accused to plead to each charge.

4773. At the beginning of the inquiry, the prosecutor shall exhibit the articles of charge to the commissioners, which shall be openly read, and the person accused shall thereupon

be required to plead 'guilty' or 'not guilty' to each of them, which pleas shall be forthwith recorded with the articles of charge. If the person accused refuses, or without reasonable cause neglects to appear, to answer the charge either personally or by his counsel or agent, he shall be taken to admit the truth of the articles of charge. Act XXXVII. 1850, sect. 11.

Refusal or neglect to appear considered as admission of truth of charge.

4774. The prosecutor shall then be entitled to address the commissioners in explanation of the articles of charge, and of the evidence by which they are to be proved: his address shall not be recorded. Act XXXVII. 1850, sect. 12.

Prosecutor's address.

4775. The oral and documentary evidence for the prosecution shall then be exhibited: the witnesses shall be examined by or on behalf of the prosecutor, and may be cross-examined by or on behalf of the person accused. The prosecutor shall be entitled to re-examine the witnesses on any points on which they have been cross-examined, but not on any new matter, without leave of the commissioners, who also may put such questions as they think fit. Act XXXVII. 1850, sect. 13.

Evidence for the prosecution.

4776. If it shall appear necessary before the close of the case for the prosecution, the commissioners may in their discretion allow the prosecutor to exhibit evidence not included in the list given to the person accused, or may themselves call for new evidence; in such case the person accused shall be entitled to have, if he demand it, an adjournment of the proceedings for three clear days, before the exhibition of such new evidence exclusive of the day of adjournment and of the day to which the proceedings are adjourned. Act XXXVII. 1850, sect. 14.

If further evidence be required for the prosecution.

4777. When the case for the prosecution is closed, the person accused shall be required to make his defence, orally or in writing, as he shall prefer. If made orally, it shall not be recorded; if made in writing, it shall be recorded, after being openly read, and in that case a copy shall be given at the same time to the prosecutor. Act XXXVII. 1850, sect. 15.

Defence may be made orally or in writing.

4778. The evidence for the defence shall then be exhibited, and the witnesses examined, who shall be liable to cross-examination and re-examination and to examination by the commissioners according to the like rules as the witnesses for the prosecution. Act XXXVII. 1850, sect. 16.

Evidence for defence.

4779. All witnesses, either for the prosecution or defence, shall be examined on oath, or, if exempt from taking an oath in courts of justice, on solemn affirmation, to be administered in either case by one of the commissioners, and every witness so examined and wilfully giving false evidence on any material point shall be deemed guilty of and liable to the penalties of perjury. When the prosecution is not conducted on behalf of government, the prosecutor may himself give evidence for the prosecution and may be examined for the defence. Act XXXVII. 1850, sect. 17.

Witnesses to be examined on oath or affirmation. Private prosecutor may be examined.

4780. The commissioners or some person appointed by them shall take notes in English of all the oral evidence, which shall be read aloud to each witness by whom the same was given, and if necessary explained to him in the language in which it was given, and shall be recorded with the proceedings. Act XXXVII. 1850, sect. 18.

Notes to be taken of all oral evidence.

Prosecutor may reply or call further evidence, if defence be written or supported by evidence.

4781. If the person accused makes only an oral defence, and exhibits no evidence, the inquiry shall end with his defence; if he records a written defence, or exhibits evidence, the prosecutor shall be entitled to a general oral reply on the whole case, and may also exhibit evidence to contradict any evidence exhibited for the defence, in which case the person accused shall not be entitled to any adjournment of the proceedings, although such new evidence were not included in the list furnished to him. Act XXXVII. 1850, sect. 19.

Articles of charge may be amended.

4782. When the commissioners shall be of opinion that the articles of charge, or any of them, are not drawn with sufficient clearness and precision, the commissioners may, in their discretion, require the same to be amended, and may thereupon, on the application of the person accused, adjourn the inquiry for a reasonable time. The commissioners may also, if they think fit, adjourn the inquiry from time to time, on the application of either the prosecutor or the person accused, on the ground of the sickness or unavoidable absence of any witness or other reasonable cause. When such application is made and refused, the commissioners shall record the application, and their reasons for refusing to comply with it. Act XXXVII. 1850, sect. 20.

Prosecutor or accused may apply for adjournment.

Report of enquiry to be made to government.

4783. After the close of the inquiry, the commissioners shall forthwith report to government their proceedings under the commission, and shall send with the record thereof their opinion upon each of the articles of charge separately, with such observations as they think fit on the whole case. Act XXXVII. 1850, sect. 21.

Government may require further evidence; or refer report for opinion.

4784. The government, on consideration of the report of the commissioners, may order them to take further evidence, or give further explanation of their opinions. It may also order additional articles of charge to be framed, in which case the inquiry into the truth of such additional articles shall be made in the same manner as is herein directed with respect to the original charges. When special commissioners have been appointed, the government may also, if it thinks fit, refer the report of the commissioners to the court or other authority to which the person accused is subordinate, for their opinion on the case; and will finally pass such orders thereon as appear just and consistent with its powers in such cases. Act XXXVII. 1850, sect. 22.

Final orders.

Meaning of word government.

4785. The word 'government' as used in this Act means the governor general in council, the governor or deputy governor of the Presidency of Fort William in Bengal, and the lieutenant governor of the North-Western Provinces of Bengal, whose sanction is necessary for the removal of the person accused. Act XXXVII. 1850, sect. 23.

Application of Act.

4786. Nothing in this Act shall be construed to repeal any Act or Regulation in force for the suspension or dismissal of principal and other sudder ameens or of deputy magistrates or deputy collectors; but a commission may be issued for the trial of any charge against any of the said officers, under this Act, in any case in which the government shall think it expedient. Act XXXVII. 1850, sect. 24.

Power of government to suspend or remove any public servant without inquiry under the Act.

4787. Nothing in this Act shall be construed to affect the authority of government, for suspending or removing any public servant for any cause without an inquiry under this Act. Act XXXVII. 1850, sect. 25.

COURT OF THE DIST... JUDGE OF BHAUGULPO...